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## TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 62

THE EAST NEW YORK SAVINGS BANK,  
APPELLANT,

vs.

ALVIN HAHN AND HANNAH HAHN

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK,  
COUNTY OF KINGS

FILED APRIL 18, 1945.

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**Court of Appeals**  
**OF THE STATE OF NEW YORK.**

THE EAST NEW YORK SAVINGS  
BANK,  
Plaintiff-Appellant,  
against

ALVIN HAHN and HANNAH  
HAHN, his wife,  
Defendants-Respondents,  
and

PEOPLE OF THE STATE OF NEW  
YORK, HAROLD MEYERS and ROSE  
MEYERS,  
Defendants.

**Statement Under Rule 234.**

The summons and complaint in the above entitled action were served on March 27th, 1944. Issue was joined by the service of an answer by the defendants Alvin Hahn and Hannah Hahn, his wife, on April 11th, 1944. John P. McGrath and John J. Buckley appeared for the plaintiff; Collier & Collier, Esqs., appeared for the answering defendants. 3

There has been no change in parties or attorneys herein, except that the name of the defendant Christian M. Andersen has been stricken from the title and the title has been further amended by describing the defendants sued herein as "John Doe" and "Richard Roe" by their correct names; to wit, Harold Meyers and Rose Meyers.

**Notice of Appeal.**  
**SUPREME COURT,**  
**KINGS COUNTY.**

**THE EAST NEW YORK SAVINGS  
BANK,**

**Plaintiff,**

**against**

1. **ALVIN HAHN**
2. **HANNAH HAHN, his wife**
3. **CHRISTIAN M. ANDERSEN**
- 5 4. **PEOPLE OF THE STATE OF NEW  
YORK**
5. **"JOHN DOE"**
6. **"RICHARD ROE", last two  
names fictitious, persons in-  
tended being occupants of  
mortgaged premises,**  
**Defendants.**

**Index  
#2918-1944.**

*Sirs:*

PLEASE TAKE NOTICE, that, pursuant to the provisions of Subdivision 4, of Section 588 of the Civil Practice Act, the above named plaintiff The East New York Savings Bank, relying solely upon the question involving the validity of Chapter 93 of the Laws of 1943 under the provisions of Section 10 of Article I of the Constitution of the United States and Section I of the Fourteenth Amendment of the Constitution of the United States, hereby appeals as of right, to the Court of Appeals of the State of New York, from the final judgment herein, dated the 10th day of August, 1944 and entered in the Office of the Clerk

*Notice of Appeal.*

of the County of Kings on the 18th day of August, 1944, adjudging that the complaint in this action be dismissed upon the ground that the plaintiff has failed to establish that Chapter 93 of the Laws of 1943 was invalid and unconstitutional at the time it became a law or at the time of the commencement of this action, and from each and every part of said judgment, and the whole thereof.

Dated, Brooklyn, New York, August 23rd, 1944.

Yours, etc.,

JOHN P. McGRATH,  
JOHN J. BUCKLEY,  
Attorneys for Plaintiff,  
Office & P. O. Address,  
2650 Atlantic Avenue,  
Brooklyn, 7, New York.

To:

COLLER & COLLIER,  
Attorneys for the Defendants  
Alvin Hahn and Hannah Hahn,  
Office & P. O. Address,  
277 Broadway,  
Borough of Manhattan,  
New York City.

CLERK OF THE COUNTY OF KINGS.



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Summons.

SUPREME COURT,

KINGS COUNTY.

THE EAST NEW YORK SAVINGS  
BANK,

Plaintiff,

against

- 11
1. ALVIN HAHN
  2. HANNAH HAHN, his wife
  3. CHRISTIAN M. ANDERSEN
  4. PEOPLE OF THE STATE OF NEW YORK
  5. "JOHN DOE"
  6. "RICHARD ROE", last two names fictitious, persons intended being occupants of mortgaged premises,
- Defendants.

*To the above named defendants and each of them:*

12

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons to serve a notice of appearance on the plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Brooklyn, New York, March 23, 1944.

JOHN P. McGRATH,

JOHN J. BUCKLEY,

Attorneys for Plaintiff,

Office & P. O. Address,

2650 Atlantic Avenue,

Brooklyn 7, New York

**Complaint.****SUPREME COURT,****KINGS COUNTY.****[SAME TITLE.]**

The complaint of the above named plaintiff, by its attorneys, John P. McGrath and John J. Buckley, respectfully shows to this Court and alleges:

**FIRST:** That on or about the 19th day of July, 1921, the defendants, Christian M. Andersen and Bertha Andersen, his wife, for the purpose of securing to The East New York Savings Bank the sum of Five Thousand (\$5,000.) Dollars, jointly and severally executed, acknowledged and delivered their certain bond, sealed with their seals, wherein and whereby they jointly and severally covenanted and agreed to pay to the said The East New York Savings Bank, as obligee, the sum of Five Thousand (\$5,000.) Dollars on April 1, 1924, together with interest thereon from the date thereof at the rate of five and one-half (5½%) per cent per annum, to be paid semi-annually on the first days of April and October in each year until said principal sum be fully paid; and in the said bond it was expressly agreed that the whole of said principal sum shall become due at the option of the obligee after default in the payment of interest for twenty (20) days, or after default in the payment of any taxes, assessments or water rates for thirty (30) days after the same becomes due and payable, or after default in the payment of any instalment of principal.

14

15

**SECOND:** That as collateral security for the payment of said indebtedness the said Christian M. Andersen and Bertha Andersen, his wife, on the same day executed, acknowledged and delivered a mortgage which was thereafter duly recorded in the Office of the Register of the County of Kings in Liber 4971 of mortgages, at page 31 on July 21, 1921 (the mortgage tax having first been duly paid), and thereby mortgaged to the said The East New York Savings Bank the following described premises:

17

ALL that certain lot, piece or parcel of land with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

18

**BEGINNING** at a point on the northerly side of Atlantic Avenue distant twenty-five (25) feet two and one-half ( $2\frac{1}{2}$ ) inches westerly from the corner formed by the intersection of the northerly side of Atlantic Avenue with the westerly side of Sheffield Avenue; thence westerly along the northerly side of Atlantic Avenue twenty-five (25) feet more or less to a point opposite the center of a party wall standing partly on premises herein described and partly on premises next adjoining on the west; thence northerly parallel with Sheffield Avenue part of the distance through the center of a party wall one hundred fourteen (114) feet five (5) inches more or less to the southerly side of lot 23, block 22 on a map of East New York Lands belonging to John R. Pitkin, The East New York Land Company

and others, and filed in the Kings County Register's Office; thence easterly along the southerly side of lot 23 as laid down on said map twenty-five (25) feet more or less, to a point on a line drawn parallel with Sheffield Avenue from the point of beginning; thence southerly parallel with Sheffield Avenue part of the distance through a party wall one hundred seventeen (117) feet eight (8) inches more or less to the point or place of BEGINNING.

TOGETHER with all the right, title and interest of the mortgagors, of, in and to the land lying in said Atlantic Avenue in front of and adjoining the above described premises to the centre line of said avenue. 20

TOGETHER with all fixtures and articles of personal property now or hereafter attached to, or used in connection with, the premises, all of which are represented to be owned by the mortgagor and are covered by this mortgage.

THIRD: That the mortgage contained the same conditions as the said bond and further provided as follows:

"That the mortgagor will pay the indebtedness as hereinbefore provided. 21

"That the whole of said principal sum shall become due after default in the payment of any instalment of principal or of interest for twenty days, or after default in the payment of any tax, water rate or assessment for thirty days after the same becomes due and payable.

*Complaint.*

"That the holder of this mortgage in any action to foreclose it, shall be entitled (without notice and without regard to the adequacy of any security for the debt) to the appointment of a receiver of the rents and profits of said premises; and in the event of any default in paying said principal or interest, such rents and profits are hereby assigned to the holder of this mortgage as further security for the payment of said indebtedness."

23 FOURTH: That the defendants and each of them have failed to comply with the terms and conditions of said bond and mortgage by failing to pay the principal sum of Five Thousand (\$5,000.) Dollars which became due on the 1st day of April, 1924 and that by reason of the maturity of said bond and mortgage interest at the rate of six (6%) per cent per annum was thereafter paid.

FIFTH: That by reason of the foregoing default there is now justly due and owing to the plaintiff on said bond and mortgage the principal sum of Four Thousand Nine Hundred Twenty-five (\$4,925.) Dollars together with interest thereon at six (6%) per cent from January 1, 1944.

24 SIXTH: That no other action has been taken for the recovery of the sum secured by said bond and mortgage or any part thereof.

SEVENTH: That the defendants and each of them have, or may claim to have, some interest in or lien upon the mortgaged premises, or some part thereof, which interest or lien, if any, has accrued subsequent to the lien of plaintiff's mortgage and is subject and subordinate thereto.



*Complaint.*

25

**EIGHTH:** That the plaintiff is a domestic banking corporation organized and existing under and by virtue of the Laws of the State of New York.

**NINTH:** That the People of the State of New York is made a party defendant herein by reason of Transfer Taxes which may be due or owing on the Estate of Bertha Andersen, a former owner of the mortgaged premises, who died June 6, 1922. That People of the State of New York is made a defendant in this action for no other reason than the possible lien of said Transfer Taxes.

**TENTH:** That on August 26, 1933, by Section 1 of Chapter 793 of the Laws of 1933, the Legislature of the State of New York, in the following language, declared a public emergency existed:

26

"SECTION 1. It is hereby declared that a serious public emergency, affecting and threatening the welfare, comfort and safety of the people of the state and resulting from the abnormal disruption in economic and financial processes, the abnormal credit and currency situation in the state and nation, the abnormal deflation of real property values and the curtailment of incomes by unemployment and other adverse conditions, exists. Therefore, in the public interest, the necessity for legislative intervention by the enactment of the provisions hereinafter prescribed, and their application until July first, nineteen hundred thirty-four, is hereby declared as a matter of legislative determination."

27

ELEVENTH: That by Section 2 of Chapter 793 of the Laws of 1933, which became law on the 26th day of August, 1933, the Civil Practice Act was amended by inserting therein a new section numbered Section 1077-a, which provided that no action or proceeding for the foreclosure of a mortgage on real property shall be maintainable solely for or on account of a default in the payment of principal secured by such mortgage or solely in the payment of any installment of principal secured by such mortgage, although the payment of such principal or installment of principal may be due by the terms of such agreement, bond or mortgage.

TWELFTH: That by the Laws of 1934, Chapter 278, Laws of 1935, Chapter 1, Laws of 1936, Chapter 86, Laws of 1937, Chapter 82, Laws of 1938, Chapter 500, Laws of 1939, Chapter 606, Laws of 1940, Chapter 566, Laws of 1941, Chapter 782, the application of 1077-a of the Civil Practice Act, as enacted by Chapter 793 of Laws of 1933, hereinafter referred to as Moratorium Laws, was extended from year to year until July 1, 1943, because the Legislature stated the emergency and depression which existed in 1933, as set forth in Section 1 of Chapter 793 of the Laws of 1933, had continued during that ten-year period.

THIRTEENTH: That in Chapter 93 of Laws of 1943, the application of Section 1077-a of the Civil Practice Act was further extended to the 1st day of July, 1944. Section 1 of said chapter reads in part as follows:

"SECTION 1. The serious public emergency, which existed at the time of the enactment of

Section 1077-a \* \* \* of the Civil Practice Act as added by Chapter 793 of the Laws of 1933 \* \* \* having continued, in the judgment of the legislature, to the present time and still existing, the provisions of such chapters \* \* \* shall, notwithstanding any provision of such chapter, remain in full force and effect until July 1, 1944 \* \* \*."

FOURTEENTH: At the time of the enactment of Chapter 793 of the Laws of 1933, the entire country was in the throes of a serious depression, affecting and threatening the welfare, comfort and safety of the people of this state. By Executive Order, banks had been closed and withdrawals by depositors in those permitted to remain open were limited, business and industry were at a standstill, scarcely any market existed for commodities, no mortgage loans on real property could be obtained, and no market existed for real property at anywhere near their value.

FIFTEENTH: At the time of the enactment of Chapter 93 of the Laws of 1943, and for some years prior thereto, the conditions set forth in Section 1 of Chapter 793 of the Laws of 1933 no longer existed and had long prior thereto ceased to exist and do not now exist; the economic and financial processes had become normal; financial and commodity markets for all commodities, including real property, were open and active; banks generally throughout the whole country had been reopened and had remained open for nine years or more and their depositors insured or otherwise protected against loss; that at the time of the enactment of Chapter 93 of the Laws

of 1943 there were and for several years had been and still are an abundance of funds for investment in real property and on real property mortgages on fair and favorable terms; that interest rates for years had been lowered in a highly competitive investment market and were and are exceptionally low and attractive to the borrower; that bank deposits had for years been increasing and were and are exceptionally high; that enormous sums were annually being loaned on real estate secured by bonds and mortgages, real property values had become stabilized and thousands of parcels were being bought, sold and mortgaged annually throughout the City of New York, the state and nation and more especially and more abundantly in the County of Kings, Borough of Brooklyn, City and State of New York.

SIXTEENTH: That neither at the time of the passage of Chapter 93 of the Laws of 1943, nor at any time in the year 1943, nor for some time prior thereto did there exist, nor does there now exist, any depression affecting or threatening the welfare, comfort and safety of the people of the state resulting from any abnormal disruption in economic and financial processes; or any abnormal credit or currency, in the state or nation, nor in the abnormal deflation of real property values nor the curtailment of income by unemployment and/or other adverse conditions. That there was at the time of such enactment no necessity for legislative intervention by the enactment of the provisions therein nor in Section 1077 a-b-c-d-e-f or g of the Civil Practice Act, prescribed, and that Chapter 93 of the Laws of 1943 were and are null and void for such reasons and for the reasons hereinafter alleged.

*Complaint.*

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**SEVENTEENTH:** The serious depression and emergency set forth in said Section 1 of Chapter 793 of the Laws of 1933 no longer existed at the time of the enactment of Chapter 93 of the Laws of 1943, had not existed for several years and does not now exist.

**EIGHTEENTH:** That at the time of the enactment of Chapter 93 of the Laws of 1943, the conditions set forth by the Legislature in Section 1 of Chapter 793 of the Laws of 1933 were completely reversed. Instead of a scarcity of money and widespread unemployment, bank deposits had increased to the highest point ever recorded in the history of the nation; unemployment had disappeared and its place had been taken by a scarcity of labor; and all responsible leaders of the nation have joined in admonition to debtors to pay their debts in order to syphon off the enormous income and purchasing power of the people, and in that manner to prevent a serious inflation not only of commodity but of real estate values.

38

**NINETEENTH:** That by reasons hereinbefore stated, Chapter 93 of the Laws of 1943, reenacting and extending Section 1077-a of the Civil Practice Act, is null and void and violates the provisions of Section 10 of Article I of the Constitution of the United States by impairing the obligations of the contract and also violates Section 1 of the Fourteenth Amendment of the Constitution of the United States by depriving the plaintiff of its property without due process of law and by denying to the plaintiff its rights and privileges to the equal protection of the law.

39



*Complaint.*

WHEREFORE, plaintiff demands judgment that the defendants herein and all persons claiming under them or either of them subsequent to the commencement of this action may be forever barred and foreclosed of all right, claim, lien and equity of redemption in the said mortgaged premises; that the said premises may be decreed to be sold according to law; that the moneys arising from the sale may be brought into Court; that the plaintiff may be paid the amount due on said bond and mortgage with interest to the time of such payment, any amounts which plaintiff may be compelled to advance in order to protect the lien of the mortgage described herein during the pendency of this action, the costs of this action and the expense of the said sale, so far as the amount of such moneys properly applicable thereto will pay the same; and that the defendant, Christian M. Andersen, may be adjudged to pay any deficiency which may remain after applying all of said moneys properly applicable; and that the plaintiff may have such other and further relief or both in the premises as shall be just and equitable.

JOHN P. McGRATH,

JOHN J. BUCKLEY,

Attorneys for Plaintiff,

Office & P. O. Address,

2650 Atlantic Avenue,

Brooklyn 7, New York.

(Verified March 23, 1944.)

**Stipulation Amending Paragraph Ninth  
of Complaint.**

43

**SUPREME COURT,**

**KINGS COUNTY.**

**[SAME TITLE.]**

IT IS HEREBY STIPULATED, by and between John P. McGrath and John J. Buckley, attorneys for the Plaintiff, and Nathaniel L. Goldstein, Attorney General, attorney for the Defendant, People of the State of New York, that Paragraph Ninth of the complaint in the above entitled action be amended to read as follows:

"That the PEOPLE OF THE STATE OF NEW YORK is made a party defendant herein by reason of Transfer Taxes which may be due or owing on the Estate of Bertha Andersen, a former owner by the entirety with her husband, Christian M. Andersen, of the mortgaged premises, who died testate a resident of Brooklyn, Kings County, New York, on or about June 6, 1922. Letters Testamentary were issued on her Estate by the Surrogate's Court, Kings County, on February 1, 1928. That PEOPLE OF THE STATE OF NEW YORK is made a defendant in this action for no other reason than the possible lien of said Transfer Taxes."

44

45

Dated, Brooklyn, New York, April 3, 1944.

JOHN P. McGRATH,  
JOHN J. BUCKLEY,  
Attorneys for Plaintiff.

NATHANIEL L. GOLDSTEIN,  
Attorney General,  
Attorney for Defendant, People  
of the State of New York.

by: JOHN W. BARNELL,  
Assistant Attorney-General.

46

**Answer of Defendants Hahn.****SUPREME COURT,****KINGS COUNTY.****[SAME TITLE.]**

The defendants, Alvin Hahn and Hannah Hahn, answering the complaint herein, respectfully allege.

47 **FIRST:** They deny the allegations contained in paragraphs designated "Fourth", "Fifth", "Fifteenth", "Sixteenth", "Seventeenth", "Eighteenth", "Nineteenth" of plaintiff's complaint.

**WHEREFORE** the said defendants demand judgment dismissing the complaint with costs.

**COLLER & COLLIER,****Attorneys for the Defendants****Alvin Hahn and Hannah Hahn,****Office & P. O. Address,****277 Broadway,****Borough of Manhattan,****New York City.****(Verified April 11, 1944.)**

48

**Judgment.**

At a Special Term, Part III of the Supreme Court, held in and for the County of Kings, at the Municipal Building, Borough of Brooklyn, City and State of New York, on the 10th day of August, 1944.

Present: HON. JOSEPH FENNELLY, *Justice*.

[SAME TITLE.]

This action having been commenced by the service of a summons and complaint upon the defendants, Alvin Hahn and Hannah Hahn, his wife, on March 27, 1944, and the said defendants having appeared herein and served an answer by Collier & Collier, Esqs., their attorneys, and it appearing from the affidavit of John P. McGrath verified August 3, 1944, that the defendant, Christian M. Andersen, was not served herein and is not a necessary party to this action, and that his name should be stricken from the title hereof and the defendant, People of the State of New York, having appeared herein by Nathaniel L. Goldstein, Attorney General, and having waived service of all papers except, amended complaint, notice of sale, referee's report of sale, notice of motion to confirm referee's report of sale, judgment or order thereon and surplus money proceedings, and that the true name of the defendant sued herein as "John Doe", fictitious, is Harold Meyers and that the true name of the defendant sued herein as "Richard Roe", fictitious, is Rose Meyers and that the title of this action should be amended accordingly and that the said two last

53

54

named defendants have been duly and personally served with the summons and complaint and have not appeared herein and are now in default, and this action having come on for trial before me at a Special Term, Part III of this court and having been tried on the twenty-second and twenty-third days of May 1944, and the plaintiff having appeared on the trial by John P. McGrath and John J. Buckley, Esqs., its attorneys (John P. McGrath, Esq., of counsel), and the defendants, Alvin Hahn and Hannah Hahn, his wife, having appeared on the trial by Collier & Collier, Esq., their attorneys (Edward H. Collier, Esq., of counsel), and the court having heard the allegations and proofs of the plaintiff and the defendants having moved to dismiss the complaint at the close of the plaintiff's case on the ground that the plaintiff failed to establish a cause of action and the court having reserved decision on that motion, and the defendants having rested without offering any further proof and having renewed the motion to dismiss the complaint, and the court having reserved decision thereon, and, after due deliberation, the court being satisfied that the only question in the case is whether chapter 93 of the laws of 1943 is a valid enactment under the State and Federal constitutions, and the court having made its decision herein granting the motion made by the defendants at the close of the plaintiff's case to dismiss the complaint, it is,

ON MOTION of Collier & Collier, attorneys for the defendants, Alvin Hahn and Hannah Hahn, his wife,



*Judgment.*

55

ORDERED AND ADJUDGED that the name of the defendant, Christian M. Andersen, be stricken from the title of this action and that the title of this action be amended so as to describe the defendants sued herein as "John Doe" and "Richard Roe", last two names fictitious, persons intended being occupants of mortgaged premises, by their true and correct names, to wit, Harold Meyers and Rose Meyers, respectively, and it is further

ORDERED AND ADJUDGED that the complaint herein be and the same hereby is dismissed at the close of the plaintiff's case upon the ground that on the testimony, exhibits and the entire record presented by the plaintiff, the plaintiff has failed to establish that chapter 93 of the laws of 1943 was invalid and unconstitutional at the time it became a law or at the time of the commencement of this action.

56

Enter,

J. F.,  
J. S. C.

Granted

Aug. 10, 1944.

FRANCIS J. SINNOTT,

Clerk.

57

Judg. entered 8/18/44.

**Stenographer's Minutes.**

**SUPREME COURT,**

**KINGS COUNTY.**

**SPECIAL TERM—PART III.**

[SAME TITLE.]

Brooklyn, N. Y., May 22, 1944.

Before: HON. JOSEPH FENNELLY, *Justice*.

**APPEARANCES:**

59

MESSRS. JOHN P. McGRATH and JOHN J. BUCKLEY,  
attorneys for the plaintiff (by JOHN P. Mc-  
GRATH, Esq., of counsel).

MESSRS. COLLIER & COLLIER, attorneys for the de-  
fendants Hahn (by EDWARD H. COLLIER, Esq.,  
of counsel).

---

Mr. McGrath: If the Court please, in view of the nature of this case, I think it would be in order to make a preliminary statement as to the character of the proof we wish to offer.

60 The Court: Yes, all right, I think so.

Mr. McGrath: In the first place, your Honor will observe in the complaint that this action to foreclose the mortgage is predicated upon a principal of default only. There is no dispute but that the interest has been paid, and there are no tax arrears on the property at the present time. Therefore, we are asking for a judgment declaring a foreclosure and sale because the principal has been long past due and has not been paid.

A successful judgment for the plaintiff under those circumstances necessarily requires an adjudication that the so-called Mortgage Moratorium Law as renewed in 1943 is unconstitutional and void. The title of that law is Chapter 93 of the Laws of 1943. That is the so-called Moratorium Law which was in effect at the time that this action was commenced on March 27, 1944.

Since that date I think the Court well knows that a further renewal of the so-called Moratorium Law was had by adoption of the 1944 Legislature and the signature of the Governor, which law, as I understand it, modifies the 1943 Moratorium Law by requiring the payment of 2 percent annual amortization of mortgage principal instead of the 1 percent which was provided in the 1943 Law; and that current Moratorium Law is set to remain in effect until July 1, 1945.

62

It is our position that while the original Moratorium Law which was adopted in 1933, being Chapter 793 of the Laws of 1933, was valid because at that time there existed an economic emergency which warranted the Legislature in temporarily suspending the rights and obligations of contracts, nevertheless, at some point between the adoption of the 1933 Law and the renewal thereof predicated upon the same emergency in 1943—I say at some time between those dates the emergency terminated or came to an end, and, therefore, the justification for the enactment of this so-called Moratorium Legislation likewise came to an end.

63

As an alternative to that proposition, we urge also the proposition that if the emergency did not come to an end at some point between 1933

and 1943, then at some point between those dates it became impossible to any longer characterize the emergency as a temporary one, and it is essential for the validity of this type of legislation that the so-called emergency which is said to justify it be temporary in character, and with the passage of a reasonable length of time it is impossible to any longer designate such an emergency as temporary, and it must be said to be a continuing status rather than a temporary emergency.

65

If it be held that these economic conditions which originally gave rise to this Moratorium Legislation are still with us; then it must be held that they have taken on an aspect and nature of a continuing status rather than a temporary emergency, and the law under those circumstances would have to be declared unconstitutional.

66

The issue with respect to these contentions of the plaintiff is set forth in paragraph Fifteenth and following to the end of the complaint. It is asserted by us in the Fifteenth paragraph that at the time of the enactment of Chapter 93 of the Laws of 1943, and for some years prior thereto, the conditions set forth in Section 1 of Chapter 793 of the Laws of 1943 no longer exist, and had long prior thereto ceased to exist, and do not now exist.

The economic and financial processes had become normal; financial and commodity markets for all commodities, including real property, were open and active; banks generally throughout the whole country had been reopened and had remained open for nine years or more, and their depositors insured or otherwise protected against loss.

At the time of the enactment of Chapter 93 of the Laws of 1943 there were, and for several years had been and still are, an abundance of funds for investment in real property and on real property mortgages on fair and favorable terms. Interest rates for years had been lowered in a highly competitive investment market, and were and are exceptionally low and attractive to the borrower. Bank deposits had for years been increasing and were and are exceptionally high. Enormous sums were actually being loaned on real estate secured by bonds and mortgages. Real property values had become stabilized, and thousands of parcels were being bought and sold and mortgaged annually throughout the City of New York, the State, and the nation, and more, particularly and more abundantly in the County of Kings, State of New York.

68

We assert further in paragraph Eighteenth that the conditions which gave rise to the 1933 moratorium had by 1943 completely reversed themselves.

Instead of scarcity of money and widespread unemployment, bank deposits had increased to the highest point ever recorded in the history of the nation; unemployment had disappeared and its place taken by a scarcity of labor. All responsible leaders of the nation have joined in admonitions to debtors to pay their debts—

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Mr. Coller: May I interrupt, your Honor? I see no purpose in reading the complaint. I think that is not proof. I think we are spending a lot of time going through that.

Mr. McGrath: I am finishing this sentence, and that is all I have.

*Proceedings.*

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Mr. Coller: All right.

Mr. McGrath: —in order to siphon off the enormous income and purchasing power of the people, and in that manner to prevent a serious inflation not only of commodities but of real estate values.

71

Now, much of the proof to support those assertions lies in the official acts and documents of which we expect to ask the Court to take judicial notice. Such judicial notice is authorized by Section 344-A of the Civil Practice Act. And we are going to ask the Court to proceed in that manner in accepting our proof in order that the record need not be needlessly encumbered with many lengthy documents.

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Section 344-a authorizes the Court to take judicial notice of a law, statute, proclamation, ordinance or common law of a sister State of the United States, a private act or resolve of the Legislature of this State or of the Congress of the United States, an ordinance or resolution of any local governing body, a rule or regulation of an executive department, public board, agency or officer of this State, or of a city, county, town or village thereof—and here an important one—a rule or regulation of an executive department of the Government of the United States or a public board, agency or officer created by law thereof.

Under this section the Court has the right not only to take judicial notice of those matters when they are called to the Court's attention by counsel, but the Court has the further right to take judicial notice of any of such matters which the Court can discover by its own independent research or which comes to the Court's attention from whatever source.



And where a matter of law specified in that section is judicially noticed, the Court may consider any testimony, document, information or argument on the subject, whether the same is offered by counsel, a third party, or discovered through its own research. And that right extends not only to the Trial Court but also to any Appellate Court passing on the same case.

That is an extremely broad power and we submit one of great convenience in this particular case, because it enables us to offer proof in this case without making a tremendous record.

What we would like to do is this: We would like to make reference to such official documents as we wish the Court to judicially notice, and in our proof we will refer the Court to the official citations, where these documents can be found, printed in full, or where an official citation is lacking, to refer the Court to some reference source which can be readily obtained where the matter upon which we rely is set forth. And having done that, when the time comes to request the Court to make findings in this case, we will simply ask the Court to make a finding with respect to that particular data or document or legislation or decree, and embody in the finding the reference to which we have given the Court on our memorandum. That does not mean we do not intend to introduce any proof here at all. We do intend to introduce some oral proof. But in the nature of proof the amount of material available on this subject is so vast and the field so tremendous that we couldn't possibly hope to cover it all by testimony and proof.

We are going to ask the Court to take judicial notice of the state of the Moratorium Laws in this

country outside of the State of New York. And in that connection we would like to summarize the condition of moratorium legislation in this country from the report of the Joint Legislative Committee on Mortgage Moratorium and Deficiency Judgments, which was submitted to the New York State Legislature on February 24, 1942, and which is commonly known as the Janes Committee Report, and that is Legislative Document No. 45 of the year 1942.

In that document it states that there were twenty-three States in the Union which never enacted moratorium legislation. Of the remaining twenty-five States which enacted such legislation, New York State is the only State in which such legislation is still in force and effect. Such legislation has been declared unconstitutional by judicial decision in six States, these States being Arizona, Kansas, Nebraska, Texas, Mississippi and Iowa. In all the other States except the State of New York such legislation has either been repealed or it expired according to its terms and was not thereafter re-enacted.

The Court: These six States you mention that it was declared unconstitutional in, was the original moratorium legislation declared unconstitutional?

Mr. McGrath: No, sir.

The Court: Or simply the continuance of it?

Mr. McGrath: The renewal or re-enactment of it in each instance. In each instance the original legislation was sustained. The outstanding case on this subject is Home Building & Loan Association against Blaisdell, in which the Supreme Court of the United States determined that an original Moratorium Act of the State of Min-

nesota was constitutional as a temporary emergency measure; and each of the six decisions in the States I mentioned declaring the moratorium legislation in those States unconstitutional based their judgment on the authority of the Blaisdell case; and the determination of unconstitutionality was based upon a finding, a judicial finding, to the effect that the emergency which justified the original legislation no longer existed.

The Court: The Blaisdell case, as I recall it, held that an emergency must in fact exist under the law and the Constitution.

Mr. McGrath: That is right. And they also held that while the judgment of the Legislature was entitled—

The Court: Although it was entitled to consideration, it wasn't binding.

Mr. McGrath: That is right.

The Court: The Court could inquire behind it to see whether a proper emergency existed.

Mr. McGrath: It is always a proper matter for judicial inquiry, and that applied not only to the time when the Legislature enacted but also during the period when the legislation is in force. Even though it was valid when enacted, the Court can inquire at a subsequent date while it is literally in force to see whether it is still justified at that date, and if the Court finds it is not, it can say it is all over.

This legislative report to which I have just made reference is the last official document of the New York State Legislature bearing on the moratorium apart from the legislation itself which we have under attack. What I mean by that is this: In 1943 the New York State Legislature enacted a renewal of this Moratorium Legisla-

tion, and it simply stated—and I quote—it simply stated in substance that the serious public emergency which existed at the time of the enactment of the original Chapter 793 of the Laws of 1933 having continued in the judgment of the Legislature to the present time and still existing. With that preliminary recital they then re-enacted the legislation.

There was in 1943 no Legislative Committee appointed to investigate the question whether that recital was in fact true or not.

83 The Janes Committee report to which I have referred is the last report of any legislative committee on that subject prior to or since the enactment of the 1943 Legislation; and I should like for the Court to take judicial notice of this entire document, but I would like to have a statement from that document with respect to real estate conditions at the time the report was made read in the record. I should also like to read into the record the findings and recommendations of that committee.

84 First of all, the committee says at page 27 of the report "Consideration should be given to the probable real estate trends of the next few years. Real Estate Analysts, Inc., have prepared a chart showing the cycles of real estate booms and depressions from 1800 to 1940. This chart indicates that booms and depressions in real estate follow one another with considerable regularity. Experience has indicated that there is a cycle of approximately eighteen years between the crest of one boom period and another with an intervening period of depression. According to this chart, real estate entered a depression period at the beginning of 1930 and should have emerged

from such depression about 1938 or 1939. It was not, however, until 1940 that real estate passed above the normal level. By December 1, 1941, it was nearly 20 percent above normal.

"There is another factor which may play a very important part in real estate activity of the next few years. The entry of this country into war has already curtailed and may eventually stop residential building. The rent control bills now before Congress and the voluntary fair rent committees already functioning in different parts of the State are indications of the housing shortage soon to be expected. Any shortage in residential property, if it exists for a sufficient period of time, should result in an increased market for older residential properties.

86

"It may well be that the next few years will see a substantial increase in the value and marketability of these older properties. It is this class of property which to a large extent is covered by the mortgages which are now within the protection of the Moratorium Laws."

One last paragraph on that.

In the spring of 1941 an action was brought in Queens County to foreclose a moratorium mortgage where there was a default only in the payment of principal. The complaint in the action referred to the Moratorium Laws and then proceeded to set forth many facts indicating that the emergency had expired and that the Moratorium Laws be declared unconstitutional for this reason, and that foreclosure of the mortgage be permitted. The motion to dismiss the complaint was denied, on which motion an opinion was written by the Court holding that the complaint stated

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a good cause of action, and that if the plaintiff was able to prove the facts alleged in the complaint the Moratorium Laws would be unconstitutional because of the expiration of the emergency.

That is the case of Kaelin against Michelson, 176 Misc. 536, Special Term, Queens County, March 26, 1941.

89 In connection with that case, I would like to say to the Court that the complaint in that case is almost verbatim the complaint in this case, the difference being the different statute which was involved there. That was the 1940 or 1941 Renewal Law, and this complaint deals with the 1943 Renewal.

The Court: Did that case go to trial?

Mr. McGrath: No, sir. The plaintiff in that case died and it was never proceeded with. However, I have the opinion of Mr. Justice Hooley in that case in my papers and reference will be made to it in our memorandum.

The findings made by the Janes Committee are as follows:

90 "The Committee finds: 1. That the emergency still exists and that the sudden termination of the moratorium would of itself now create an emergency. Any improved business and economic conditions resulting from the Defense Program and the war have largely been offset by the increase in living costs and the enormous and ever-increasing tax burden. The average home owner has received no relief from the burden of real estate taxes and on the contrary such taxes have increased since the first adoption of the moratorium.



*Proceedings.*

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Any present sudden termination of the moratorium might result in a very large amount of forced liquidation of mortgaged indebtedness resulting in losses alike to property owners, mortgagees, depositors and others.

"2. That conditions generally in real estate have improved and the curtailment of building during the war seems likely to further increase values. That some permanent solution of the moratorium problem should now be made before we pass through the period of war-stimulated business activity into a possible period of serious post-war depression.

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"3. That interest rates on moratorium mortgages should not exceed 5 percent, and that mortgagees should reduce their interest to 5 percent or lower to bring it in line with present-day conditions.

"4. That property owners should amortize their mortgages when the interest rate is reduced to 5 percent or lower; that annual payments of principal should be from 2 to 3½ percent depending upon the interest rate charged.

"5. That property owners unable to pay such amortization should in the event of foreclosure be allowed a reasonable time to sell or refinance, provided they have an equity in the property and have kept it in a reasonably good state of repair.

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"6. That in suits on bonds to recover interest or advances owners should be allowed to set forth a fair and reasonable market value on their property.

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*Proceedings:  
Max Schnapier—For Plaintiff—Direct.*

"7. That the present law relating to deficiency judgments is satisfactory.

"8. That when the moratorium mortgages have been placed on amortization basis there will no longer be danger of extensive liquidation on the termination of the moratorium and the same should then be terminated."

The Court: We will take a ten-minute recess now.

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(There was a short recess. Thereafter the trial was resumed.)

The Court: Before we start taking any testimony, Mr. Coller, do you wish to make any statement?

Mr. Coller: No. I make no statement at all.

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MAX SHNAPIER, 8913 73rd Avenue, Glendale, Queens, New York, called as a witness in behalf of the plaintiff, being duly sworn, testified as follows:

Mr. McGrath: Your Honor, I am handing up a memorandum.

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The Court: All right, sir.

Mr. McGrath: And here is a copy for my adversary.

I offer in evidence a bond bearing date of July 19, 1921, made by Christian M. Andersen and Bertha Andersen, his wife, to the East New York Savings Bank, in the sum of \$5,000, which sum becomes due April 1, 1924, with interest at 5½ percent.

Mr. Coller: No objection.

(Received in evidence as Plaintiff's Exhibit 1.)

Mr. McGrath: I offer in evidence a mortgage bearing the same date between the same parties, in the same amount, and recorded July 21, 1921, in the Kings County Register's office in Liber 4971 of Mortgages, page 31.

(Received in evidence as Plaintiff's Exhibit 2.)

*Direct examination by Mr. McGrath.*

Q. Mr. Shnapier, what is your business? A. 98  
Assistant vice-president of The East New York Savings Bank.

Q. Do you have charge of the servicing of a group of mortgages owned by The East New York Savings Bank? A. I do.

Q. Does The East New York Savings Bank own the bond and mortgage which have just been offered in evidence? A. They do.

Q. When did the principal of that bond and mortgage become due? A. April 1, 1924.

Q. Have the bond and mortgage ever been extended? A. No, sir.

Q. Has anything been paid on account of the principal sum of \$5,000? A. Yes.

Q. When and how much? A. On October 3, 1942, \$12.50 was paid. January 4, 1943, \$12.50. April 3, 1943, \$12.50. July 1, 1943, \$12.50. October 1, 1943, \$12.50. January 3, 1944, \$12.50. April 1, 1944, \$12.50. 99

Q. That makes a total of \$87.50? A. Correct.

Q. Were they the amortizations aggregating 1 percent per annum which were called for by the

100 *Max Schnapier—For Plaintiff—Direct—Cross.*

Mortgage Moratorium Law which first came into existence in 1942? A. That is right.

Q. Has interest been paid on the mortgage, and if so, up to what date? A. Up to April 1, 1944.

Q. At what rate has interest been paid? A. At 6 percent.

Q. How long have you been collecting interest at the 6 percent rate? A. Since April 1, 1929. From and after April 1, 1929.

Q. This action was commenced on March 27, 1944, is that correct? A. Yes, sir.

101 Q. At that time the only default was a default for the non-payment of principal; is that correct? A. Yes, sir.

Q. Have you demanded payment of the principal of the mortgage? A. Yes, sir.

Q. And it has not been paid? A. No, sir.

Q. Since the commencement of this action, April 1, interest and the quarterly installment of \$12.50 was paid? A. Yes, sir.

Q. How much is due at the present time on the mortgage? A. \$4,912.50.

Q. Have you computed interest on this amount from April 1, 1944 to date? A. Yes. It amounts to \$41.76.

Q. That is up to May 22, 1944? A. That is right.

102 Q. What is the total due? A. \$4,954.26.

Mr. McGrath: Your witness.

*Cross-examination by Mr. Collier.*

Q. The installment and interest was paid prior to the commencement of the action, is that right, in January of this year? A. Prior to the commencement of the action?

*Max Schnapier—For Plaintiff—Cross.*  
*Irvin Bussing—For Plaintiff—Direct.*

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Q. Yes. A. The installment was paid.

Q. There were no arrears prior to the installment and interest on the principal? A. No, sir.

Q. On the amortization? A. No, sir.

Q. And taxes were paid? A. Yes, sir.

Q. And after the summons was served you did receive another payment? A. Correct.

Q. You knew it was after the summons was served? A. Yes, sir.

Q. In March, I mean? A. Yes, sir.

Q. And after that payment was made, and the last payment has been made in April, there are no arrears as far as amortization or interest or taxes is concerned, is that right? A. That is right.

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Q. And that is the way it stands to this present moment? A. That is right.

Mr. Coller: That is all.

IRVIN BUSSING, 31 Grace Court, Brooklyn, New York, called as a witness in behalf of the plaintiff, being duly sworn, testified as follows:

*Direct examination by Mr. McGrath.*

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Q. Dr. Bussing, what is your business or profession? A. I am the manager of the Research and Statistical Department of the Savings Bank Trust Company.

Mr. Coller: A little louder.

The Witness: Manager of the Research and Statistical Department of the Savings Bank Trust Company.

Q. What is the Savings Bank Trust Company?

A. It is a bank owned by the savings banks of New York State. All the savings banks own stock in this company.

Q. Will you tell us what educational background and experience you had before you assumed the position which you now hold? A. From 1927 to 1936 I was Professor of Economics at Columbia University. And from 1936 to the present time I held the job that I referred to a moment ago.

Q. That is what, again? A. Manager of the Department of Economics and Statistics, Research and Statistics, Economic Research and Statistics.

Q. Will you tell us where you received your education and what academic degrees you hold?

A. I was graduated from Columbia University with the degree of Bachelor of Arts, Master of Arts, and Doctor of Philosophy in Economics. I got my degree in economics, a doctor's degree in economics, in 1935 from Columbia.

Q. When did you get your Bachelor of Arts' degree? A. 1923.

Q. And your Doctor of Philosophy? A. 1935.

Q. Following your graduation from Columbia, did you immediately undertake a position as a lecturer or an instructor in economics? A. No. I was engaged from 1923 to 1927 with the Metropolitan Life Insurance Company, and I went from the Metropolitan Life in 1927 to Columbia University as an instructor in economics.

Q. And you continued in that position until 1936? A. That is right.

Q. As an instructor? A. Yes.



Q. Now, will you give us a brief statement of your duties in your present position? A. No savings bank with the exception of the Bowery Savings Bank maintains a department of economic research. And, consequently, whenever problems of an economic character arise that do not follow in the ordinary channels of business those matters for research are turned over to Savings Bank Trust Company. The Savings Bank Trust Company in turn refers the matter to me for investigation and report. Anything in the nature of general economic research comes to my department for analysis and disposition.

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Q. And you are constantly engaged in economic research on various problems for the savings banks? A. Yes, sir.

Q. What does that department of which you are the head consist of? A. We have two junior statisticians, one chartist and one comptometer operator. The junior statisticians qualify as junior economists, and the other two people are machine operators, so to speak technicians.

Q. And they are constantly engaged in this work in addition to yourself? A. That is right, under my direction.

Q. Have you caused to be made and made yourself some research and study with respect to the economic conditions in the United States and more particularly in the State of New York in the year 1933 and in the ensuing years up to the present time? A. Yes, sir.

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Q. Have you assembled certain figures, statistics and data with reference to that study and analysis? A. I have.

Q. Will you tell us, first of all, whether that study embraces a consideration of the conditions

112 *Irvin Bussing—For Plaintiff—Direct.*

in this country and in this State with respect to bank deposits? A. Yes, sir.

Q. Will you give us a statement of your findings with respect to that situation in 1933? A. In 1935 is the first date on which we have figures comparable to 1943 figures.

In New York State on December 31, 1935, the amount of demand and time deposits in this State, including in there bank deposits, amounted to 13.2 billion dollars. And June 30, 1943, the last date on which we have comparable figures, bank deposits amounted to 25.7 billion dollars, which is an increase of 95 percent between those two dates.

Now, those figures apply to all banks in the State, commercial banks as well as savings banks.

As far as savings banks are concerned, in 1933 the savings banks in New York State lost 7.54 percent of their deposits. That is to say, depositors drew out that amount of money. In 1943, the year just ended, the savings banks gained 8.57 percent.

Mr. Collier: May I know what year?

The Witness: In 1943.

Mr. Collier: Over 1933?

The Witness: That is the actual gain in deposits during the year 1943, 8.57 percent.

114 Q. That would be over the preceding year? A. That means at the end of the year their deposits were 8.57 percent greater than they were at the beginning of the year 1943, whereas in the other case, in 1933, the deposits at the end of the year were 7.54 percent less than they were at the beginning of the year.

In actual dollar amount—those are percentages

—I can give you the dollar amount for the two years as follows:

In 1933 the savings banks lost \$392,000,000. That is to say, depositors took out \$392,000,000 more than they put in during that year.

In 1943 depositors put in \$500,000,000 more than they took out. Just the opposite.

In other words, in 1943 we had a gain of \$500,000,000. In 1933 you had a loss of \$392,000,000.

Q. Do you have among your documents there a statement made by the Superintendent of Banks in 1933 with respect to the conditions of currency at that time? A. Yes, sir.

Q. Will you tell us what that was? A. In 1933 the Superintendent of Banks reported that there was a shortage of currency in the State of New York. The Superintendent reported at the end of the year, "Attention was at once centered upon plans for the issuance of Scrip. And on March 6, 1933, the Governor asked the Legislature for an act authorizing the creation of a state-wide corporation to serve this purpose. Such a bill was passed immediately and the plans for the issuance of Scrip against bank deposits moved swiftly forward and were not abandoned until it was definitely known that the National Government was prepared to offer a solution."

That is taken from the Annual Report of the Superintendent of Banks for the year ending December 31, 1933, and is known as Legislative Document 1934, No. 24.

Q. Can you give us the figure of the bank deposits in the State of New York on the latest date that you have? A. The latest date is June 30, 1943, for New York State, and the figure is 25.7 billion dollars.

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*Irvin Bussing—For Plaintiff—Direct.*

Q. How does that figure compare with any preceding figure in the history of the State of New York? A. It is the all-time high.

Q. Do you say the banks of the State of New York are in a stronger position today than they have ever been in their history?

Mr. Coller: I object to that.

The Court: I will sustain the objection.

A. On this matter of currency in circulation—

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Mr. Coller: Are you answering the question, Mr. Witness?

The Witness: I thought the—

Mr. McGrath: The objection was sustained, which means you may not answer that question.

The Witness: I didn't finish what I was going to say about the statement of the Superintendent of Banks.

Q. You are adding to your previous answer?

A. Yes.

Q. Go ahead. A. The Superintendent called attention to the fact there was not sufficient currency in circulation in 1933.

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I would like to point out that the situation is quite different today.

In 1933, taking the figures for the country as a whole—we don't have it for New York State in particular—but for the country as a whole in 1933 the amount of money in circulation was \$45.49 per capita.

In 1944, February of this year, the amount of money in circulation was \$151.22 per capita, or an increase of 3.3 times over the figures for 1933.

The Court: Is that 1944, you say?

The Witness: 1944, yes, February, 1944.

Q. Will you give us those figures in dollar amounts, too, please? A. In dollar amounts, the amount of money in circulation in 1933 for the country as a whole was \$5,720,764,000; and in February, 1944, February 29th to be exact, it was \$20,823,568,000. Those figures are taken from the Treasury statement which is published once a month.

Q. Do you have some figures assembled with reference to the purchase of War Bonds? A. Yes, sir.

Q. In this country? A. Yes, sir.

Q. In recent months? A. I have for New York State, and the comparison as between the situation in New York State and the situation in the country at large.

In New York State in 1942 individuals—I am speaking now only of bonds bought by individuals, and specifically Series E Bonds—those are the savings bonds bought by individual savers in New York State in 1942. Individuals bought \$49 per capita of E Bonds, whereas in the country at large—

The Court: Or C, is that?

The Witness: It is E Bonds, sir.

The Court: E?

The Witness: Yes, sir.

A. (Continuing) —whereas in the country at large the sale of bonds was \$28 per capita. \$28 in the country at large compared with \$49 per capita in New York State.

*Irvin Bussing—For Plaintiff—Direct.*

In 1943 New York has bought \$81 to every \$65.10 bought by individuals in other parts of the country.

In February, 1944, New York State, \$20.10 versus \$17 for the country at large per capita.

And in March of this year we are still ahead \$5.55 per person as compared with \$4.54 for the country at large.

All through the war period New York citizens have bought more War Bonds per capita than citizens in other parts of the United States.

Q. Did you get those figures from the Bulletin of the Treasury Department? A. Those are taken from the Bulletin of the Treasury Department for March, 1944, Table 3, page 37.

And the population figures are taken from the Bureau of the Census. I can give you more detailed citation if you want it.

Q. Do you have some figures on the gains and deposits in savings banks comparing the situation as it existed with respect to the savings banks of the State in 1933 with the situation in 1943? A. I think I have given those figures.

Q. Those are the figures you have given us? A. Yes, I have.

Q. Yes. Now, have you made a study of employment conditions in New York State? A. Yes, sir.

Q. Tell us what your figures show with respect to that. A. I have a three-fold classification on this point. First is the number of wage earners in New York State in 1933 versus 1943.

There is an increase of 92½ percent in the number of wage earners employed in New York State between the two dates, 1933 and 1943. That is the number of wage earners.



The second item is the amount of money paid to workers in New York State. That is weekly pay rolls. The aggregate of weekly pay rolls of manufacturing enterprises in New York State. There there is an increase of 266 percent between 1933 and 1943; 266 percent increase in weekly pay rolls.

The third item is in terms of weekly earnings of workers in the State. That means the amount of money that the individual receives in his pay envelope taken as an average of all the workers employed.

In 1933 the average weekly earnings of workers was \$21.90.

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In 1943 the average was \$44.68, or an increase of 103.7 percent during the ten-year period.

Those figures are taken from the New York State Department of Labor.

I might add that these figures refer to the individual earnings, and that family incomes are larger even than these figures would indicate, because in 1943 more members of the average family were at work.

In 1933 a man was fortunate if he had a job himself, to say nothing of his wife and daughter and son; but in 1943 not only was the head of the family working, but other members of his family who weren't in the Armed Services probably were working also, and consequently the actual increase and economic well-being was greater than these figures would indicate.

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Q. Do you have some figures on department store sales in 1933 as compared with 1943? A. Yes, sir. We have those figures for the Second Federal Reserve District, which is in New York State, the seventeen counties in Northern New Jersey and Fairfield County, Connecticut. New

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*Irvin Bussing—For Plaintiff—Direct.*

York State, of course, is the major item in that figure. I have to explain these figures,

We take the amount of sales in the period 1935 to 1939 as 100 percent. That is called the base period. Then we relate the actual sales in other years to the sales during that base period to determine the increase or decrease from that base period.

According to that measurement in 1933 department store sales were 86 percent of that base period 1935 to 1939. 86 percent in 1933.

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In 1943 department store sales were 134 percent of the base period.

In other words, from 1943 to—from 1933 to 1943 there is a spread of 48 points in the index. 48 points higher in 1943 than in 1933, using the 1935-1939 period as the base period.

Q. Going back to the figures you gave us with respect to employment, that figure of weekly wages prevailing in 1943 as the amount of weekly wages, how does that figure compare with any previous figure in the history of the State of New York? A. The 1943 figure also is the high for all time.

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Q. Now, I think you have some figures on the average number of wage earners in the State of New York engaged in manufacturing. A. When I said a moment ago there was an increase of 92½ percent of the number of workers, I didn't give the actual number because I didn't think you were interested in those figures.

The actual number of workers employed in manufacturing in 1933 in New York State was 323,071, and in 1943 the number had increased to 735,265.

Q. Are those figures an all-time high for New York State? A. Yes, sir, they are.

Q. What figures have you with respect to the cost of living in the comparable period or the same period? A. I will have to take the year 1935 instead of the year 1933 because we don't have that figure for 1933 for New York State.

In 1935—again I am taking the period 1935-1939 as the base period, and I am comparing conditions today with that base period.

Q. Well, the reason why you are doing that is because that is the index which is furnished by the Department of Labor? A. Yes, sir, New York State.

Q. That is the base period on which they project their figures of improvement or lack of improvement? A. Yes, sir.

Q. So you are tying your conclusions to the Department of Labor method— A. That is right.

Q. —of computing increase and decrease? A. That is right. Now, in 1935, in March, living costs were 98.9 percent of the base period.

In 1944, February, living costs were 124 percent of the base period.

I beg your pardon. I said that this was for New York State. These figures are for New York City. I can't get you figures for New York State because they are not published in the proper form.

However, I do know this: That the figures in New York State as a whole are substantially the same as those for New York City. We have figures for New York State as a whole now. I didn't have them in 1935. And the variation was inconsequential.

Q. In other words, you would say that the figures indicate that the increase in cost of living in

New York City from 1935 to 1944 has been about 25.1 percent? A. That is right.

Q. Now, do you have some figures with respect to occupancy of real estate, of dwellings in the City of New York? A. Yes, sir.

Q. And the percentage of vacancies in such housing in 1933 as compared to 1943 and 1944? A. Yes, sir. I have figures here for the State of New York derived from figures in Albany, Buffalo, New York City, Rochester, Syracuse and Utica.

And in 1933 in all of those cities combined the residential vacancy was approximately 7.8 percent and in Brooklyn, for which I happen to have the figure, the occupancy or the vacancy was 9.5 percent.

In the year 1942-1943—I am using figures for 1942 for some cities and 1943 for others because the census material doesn't always coincide. Not all cities take their figures of vacancies at the same time. But in 1942-1943 in New York State cities generally the vacancies were 2.6 percent, and in Brooklyn 4.0 percent.

Q. You have no further figures on vacancies in New York State? A. No further census have been taken officially since those dates.

Q. You have figures of tax delinquencies? A. Yes, I have. In 1933—taking again those same six cities I referred to a moment ago—the average tax delinquency was 17.3 percent of the total taxes levied; and in 1942—the last complete year for which we have figures—the average was 4.8 percent delinquent.

Q. Is that a correct report to accept of the tax delinquencies which you read in the New York Times this morning in the report given to the people over the radio by the Mayor of the City of New York? A. Yes, sir.

Mr. McGrath: I offer it in evidence.

Mr. Collier: I object to it.

The Court: I would like to see it.

Mr. McGrath: I realize it may not be the best form of authenticated evidence. I could probably get the report of the City Collector over here. That summarizes it.

The Court: Yes, I think that would be better.

Mr. McGrath: That is if the objection is upon the ground that the matter offered is not properly authenticated.

Mr. Collier: I press the objection.

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The Court: Yes, I will have to sustain the objection.

Mr. McGrath: May I ask your Honor to reserve decision on that for this reason? This is probably a matter which will bear on the judicial notice, and I am going to make an effort to get the report over here. I expect to have somebody from the City Government testify.

The Court: The report will probably be available. At least it looks so from the article. This is the report made by the City Collector to the City Treasurer.

Mr. McGrath: I want to prevent myself from being precluded from asking your Honor to take judicial notice of it on any ruling in the record.

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The Court: Yes.

Mr. McGrath: I will mark it for identification.

(Marked Plaintiff's Exhibit 3 for Identification.)

Q. Now, you have got some figures of the New York Real Estate Board with respect to sales of real estate and foreclosures? A: Yes, sir.

Q. Tell us what you have on that. A. Of conveyances, which excludes foreclosures, there were in 1933 5,751 such conveyances, and in 1943 7,818, or an increase of 36 percent.

Q. That is covering Manhattan, is that right? A. Manhattan only. As to foreclosures in Manhattan, in 1933 these amounted to 1,769, and in 1943 600, or a decrease of 66 percent.

Q. Do you have some figures with respect to the decreases in mortgages in savings bank portfolios? A. Yes, sir.

Q. Please give us those figures and tell us what period they cover, and so forth. A. The best way I can present those figures would be to give you the amount of reduction in the mortgage portfolio in the year 1933 of the savings banks and then to indicate the deficiency in the volume of mortgages held by savings banks as compared with the legal maximum amount of mortgages which savings banks may hold under Section 235, paragraph 6-D of the Banking Law.

Q. The provisions of the Banking Law provide savings banks may not invest more than 65 percent of their total assets in bonds secured by mortgages on real property, is that correct? A. That is right.

Q. In your experience, from your knowledge of the practices of savings banks, when there was a normal mortgage market, was it the general practice of savings banks to invest pretty close to the limit?

Mr. Coller: That I object to.



*By the Court.*

Q. Have you any figures on that? A. Yes, sir, I have.

The Court: All right. Instead of the practice, we can get the figures. Give the percentage.

The Witness: The form in which I have my figures indicates that if the banks were to increase their mortgage portfolio up to the 65 percent referred to they would have to have \$1,110,000,000 of additional mortgages in this State.

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Mr. Collier: I move to strike that answer out.

The Court: I will allow it. How much is that?

The Witness: \$1,110,000,000 is the deficiency. The actual amount in mortgages held by the savings banks as of January 1st of this year was \$3,034,046,363, and the total permissible amount under the 65 percent rule would be \$4,276,350,000.

Mr. Collier: May I have that figure repeated, what the actual outstanding is?

The Witness: The actual outstanding as of January 1, 1944—I beg your pardon. I said three billion. That should be stricken. The figure should be \$2,976,849,885.

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Mr. Collier: May I ask one question about this figure? You refer to January 1, 1944, of the actual mortgages that were issued by the savings banks as \$2,976,849,000?

The Witness: That is right.

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*Irvin Bussing—For Plaintiff—Direct.*

Mr. Coller: 849. And the authorized amount would be according to your statistics \$4,276,350,000?

The Witness: That is right.

*By Mr. McGrath.*

Q. Well, what percentage of the total assets of the savings banks in the State of New York is presently invested in mortgages?

Mr. Coller: I think we had that.

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A. That is \$2,976,000,000.

Q. That is dollars amount. I said what percentage.

Mr. Coller: Oh.

A. Well, I better calculate that before we put it in the record.

Q. All right. A. I haven't got it calculated here.

Mr. Coller: Would it be about 45 percent?

The Witness: It is approximately that. 45 or 46 percent.

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Q. Would it be correct to say that approximately 20 percent of the total assets of the savings banks of the State of New York can under the law be invested in mortgages at the present time if such mortgages were available and if it were the disposition of savings banks management to so invest that money? A. That is true. And in addition to that it is growing each year because the annual amortization of mortgages in

the portfolio provides additional funds for investment. The amortization in 1933 alone was \$145,800,000.

Q. \$145,000,000? A. \$145,800,000, which, of course, comes out of the mortgage account; and if it is not replaced with mortgages then it decreases the portfolio, the mortgage portfolio.

Mr. Coller: What was the amortization for 1943?

The Witness: For 1943, \$145,800,000.

Q. In other words, the savings banks of the State have to invest \$145,000,000 in mortgages every year just to keep even? A. That is so.

Q. Now, have there been— A. I might say I see here on my record—you asked me a moment ago what the percentage of the mortgage account was to total assets in 1933. It was 61 percent of the total assets.

Mr. Coller: In 1933?

The Witness: Yes, sir. The mortgage and real estate account together was 61 percent of the total assets in 1933.

Mr. Coller: Your Honor, I think we could get it much better if you would permit me to adjust myself. We may as well have the percentage for 1944 if he has it there.

Mr. McGrath: He said about 45 percent.

The Court: He said he has to calculate.

The Witness: I can calculate it.

Mr. Coller: He said 45 percent difference there was.

The Witness: No, 45, 46 percent is the proportion now on my recollection of total assets.

Mr. Coller: I will take 45 or 46 percent. I am satisfied.

The Witness: I wouldn't want to put it in the record unless I got a chance to check this carefully. (Witness writes on paper.) 48 percent.

Q. Have you any other figures there that I didn't ask you about, doctor? A. There is one further indication of the fact that the savings banks of New York State are in need of the additional mortgage investments. I might call attention to the fact that about \$100,000,000 of mortgages, mortgage loans, have been taken by the savings banks in New York, located in New York State, on properties located in Pennsylvania, New Jersey and Connecticut during the past twelve months, in response to legislation which was enacted in 1942 by the Legislature, as I recall it.

And the prices paid for loans in those areas run as high as 103 $\frac{1}{4}$  percent. Those are F. H. A. loans, which reflects a yield after servicing charges of 3.75 percent on 25-year loans; 3.69 on 20-year loans; and 3.59 on 15-year loans.

In addition to the fact that savings banks are reaching out into these States for loans, they also have set up a corporation known as Institutional Securities Corporation, which has the power to use savings bank money to make loans anywhere in the United States provided those mortgages are insured by the Federal Housing Administrator; and about \$7,000,000 of such loans have been made in the last two years.

Q. Is this legislation extending to the savings banks the right to go outside of the territory of

the State of New York to make loans sought by the savings banks in order to extend their area of mortgage investment, doctor? A. Yes, sir.

Mr. Coller: I object to that and move to strike it out.

The Court: I will allow it.

*By the Court.*

Q. You know this as an expert? A. Yes, sir.

Q. Was it through your organization? A. Yes, sir.

Q. That this legislation was sought? A. Yes, sir. 158

*By Mr. McGrath.*

Q. Or course, it is also through your organization that many of these loans are procured at the present time, having in mind that the Institutional Securities Corporation is an affiliate of the Savings Bank Trust Company? A. It is a sister corporation with a common board of directors.

Q. How is the stock of the Institutional Service Corporation owned? A. Owned entirely by the savings banks of the State of New York.

Q. So the Savings Bank Trust Company and the Institutional Securities Corporation really compliment each other in the services that both companies render to the savings banks of the State? A. The Savings Bank Trust Company is primarily a discount bank on short-term loans. The Institutional Securities Corporation is a mortgage bank for the savings bank on long-term loans. 159

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*Irvin Bussing—For Plaintiff—Direct.*

Q. Have you any further data that I haven't asked you about? If you have, I wish you would remind me. A. On the interest rates, did you want to bring anything in on the interest-rate trends in Manhattan?

Q. Yes. I would like to have those figures if you have them. A. I can't go back to 1933 because the figures are not available; but I can give you the figures for 1935, which don't differ very much from the 1933 figures.

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In Manhattan the average interest rates on new first mortgage investments, not including purchase money mortgages, in 1935 was 4.74 percent; in January, 1944, 4.21 percent.

Q. Do those figures indicate a constant decline in interest rates on new first mortgages taking place from 1935 to 1944?

Mr. Coller: I object to that. The figures speak for themselves.

The Court: Have you the figures in between 1935 and 1944?

The Witness: Yes, sir.

Mr. Coller: 4.74.

The Witness: I can give you the figures by years if you would like to have them.

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Mr. Coller: I am using the figures he gave. He said 4.74 and 4.21 between the nine years.

The Witness: It isn't a constant trend. There have been variations.

*By Mr. McGrath.*

Q. Suppose you give us the figures. A. 1935 is 4.74. 1936 is 4.34. 1937 is 4.47. 1938 is 4.40. 1939 is 4.25. 1940 is 4.22. 1941 is 4.10. 1942 is



*Irrin Bussing—For Plaintiff—Direct—Cross.* 163

4.20. 1943 is 4.24. 1944, the month of January, 4.21.

Q. During the years following December, 1941, there has been no new building construction except for purposes connected with the war, is that correct? A. Predominantly.

Q. So that your interest rate figures for 1942, 1943 and 1944 would relate to presently existing construction rather than to new construction by and large, is that correct? A. Yes.

Mr. McGrath: No further questions.

*Cross-examination by Mr. Collier.* 164

Q. All these figures you have given us are not made from your personal investigation, is that right? A. Some of them are my own investigation, but most of them are from other sources.

Q. And you don't employ any staff to make these investigations personally and report to you, do you? A. Field investigations?

Q. Field investigations. A. We don't make very many field investigations. Occasionally we do.

Q. That is on very rare occasions? A. Whenever a specific job is given to us by a savings bank.

Q. That would be only in an individual case some investigation with reference to any particular matter, is that right? A. Yes. 165

Q. You make a personal investigation? A. Yes.

Q. Otherwise you take statistics compiled by other organizations? A. Yes, sir.

Q. In 1933 we were in a heavy depression at that time, weren't we? A. Yes.

Q. And there was a lot of unemployment during that year? A. Yes, sir.

Q. People were on relief. Did you look into that matter in 1933? A. Yes.

Q. And people are still on relief, is that right? A. No, sir.

Q. Did you say yes or no? A. Relief was discontinued in 1943, July 1st.

Q. Are you positive about that? A. Yes.

Q. Don't you know there is a Welfare Department still in existence and operating here in the City of New York? A. There isn't any so-called W. P. A. or Federal funds for relief.

Q. I didn't ask you about the W. P. A. I said, the City Municipal Department is still being maintained, the Welfare Department, supporting people and keeping them on relief, is that right? A. I don't know.

Q. Are you positive about that? A. Yes, sir.

Q. You are sure you couldn't be mistaken? A. Do you mean relief projects or do you mean family assistance?

Q. Whatever you care to term it, family assistance or not, it is the same assistance that was given in 1933 and is still continuing by that same department at present. A. I presume there are family relief cases, yes.

Q. In other words, there is still in existence by the City of New York the Welfare Department?

A. I presume so.

Q. To this very day? A. I presume so. I haven't made any investigation of it.

Q. Have you ever made an investigation about that? A. Family relief?

Q. Yes. A. In New York City?

Q. Yes. A. No, sir.

Q. You haven't any figures as to what the family relief was at any time between 1933 and 1944?

A. I have no figures, no, sir.

Q. Now, in 1933 you said there was a vast amount of money withdrawn from the savings banks; is that right? A. Yes, sir.

Q. By the depositors? A. Yes, sir.

Q. And can you give us exactly the amount? If you have those figures, what they withdrew in 1933? A. For savings banks the amount withdrawn over the amount deposited was \$392,000,000.

Q. \$392,000,000? A. Yes, sir.

Q. And that was withdrawn in cash during the year 1933? A. Yes, sir.

Q. Now, in 1933 that was withdrawn, that vast amount; there was no unusual purchases that you know of? A. Of course, we don't know what the people do with the money they get. All we can do is to take the department store figures and base our contention on that.

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Q. That is what I am referring to. A. Yes.

Q. Were sales any greater in 1933 than in 1932?

A. They were less.

Q. They were less in spite of the heavy withdrawals? A. Yes, sir.

Q. Would you say, then, that persons who withdrew that money hoarded it or put it away in vaults or safety boxes? Would that be your conclusion as an expert? A. It is quite possible that much money in 1933 went into hoarding. We don't know how much.

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Q. Of course, there is no means of telling? A. No.

Q. But that would be the natural conclusion?

A. Quite possible.

Q. Then, after that there was a law passed whereby deposits were guaranteed or insured. is that right? A. Yes, sir.

Q. To the extent of \$5,000? A. Yes, sir.

Q. And then, money came flowing back to the banks, isn't that right? A. Yes.

Q. And would you feel that some of these \$917,000,000, or whatever figure you gave, came back to the banks then? A. Much of it. I don't have the figure for the intervening years before me.

Q. Some of it would be reflected in subsequent deposits? A. Yes.

173 Q. And you wouldn't say, then, by reason of these vast deposits coming in subsequently that there was an era of prosperity where hoarded money was put back? A. Well, we have the indexes of business activity and, of course, those show a definite improvement from 1932 on, 1933.

Q. Conditions did somewhat improve? A. Yes.

Q. From 1933? A. Yes.

Q. In the banks, in every industry? A. Yes. But I wouldn't want to say that I think the improvement in bank deposits can be explained in terms of a return flow of hoarded currency because that is not the case.

Q. I didn't get that. A. I say I wouldn't like to imply an increase in bank deposits can be explained in terms of a return flow of hoarded currency.

174 Q. But that helped somewhat? A. Yes, undoubtedly that augmented the stream and the flow of currency.

Q. Of course, when there was a run on the banks—we call it a run on the banks—in 1933, is that right? A. Yes.

Q. And as a result of that many businesses suspended; isn't that right? A. Yes.

Q. They went out of operation, and as we stated before, money was taken out of banks and hoarded? A. Yes.

Q. And when the law was passed insuring the deposits to the extent of \$5,000 for each individual account money gradually came back? A. Yes.

Q. Business was reestablished? A. Yes.

Q. New enterprises were entered into? A. Yes.

Q. And re-employment was resumed; isn't that so? A. Yes.

Q. And as business was closed in 1933 employments were suspended, which is the natural course of events? A. Yes.

Q. When you gave us the data that the pay rolls were increased between 1933 and 1943 to the extent of 266 percent, that was due to the fact that we came out of a very deep depression into normal and better conditions, isn't that right? A. Yes.

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Q. And in the talk about 1943, during a portion of that time we were engaged in war? A. Yes.

Q. And in unusual enterprises and unusual activity? A. Yes.

Q. And an unusual amount of employment? A. Yes, sir.

Q. And so much so that even women were employed extensively? A. Yes, sir.

Q. As a matter of fact, this percentage that you state, the greater portion of it was female employment, is that right? A. I am not prepared to say it.

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Q. Would you say it offhand without any preparation? A. You mean the greater—the increase was to be explained in terms of employment of women?

Q. Women more than men during the years of the forties? A. That 266 was not the number of workers. That is the pay roll. That is the amount of money in the weekly pay roll.

Q. Yes. A. We have an increase in the number of wage earners.

Q. 93½? A. That is right.

Q. 92½ percent was the increase of employment in the period of ten years? A. Yes. I think that is a problematical question. I can't answer that without reference to the basic data.

Q. You wouldn't care to state it? A. I don't think I can say anything that would have any value on that point because my figures don't throw any light on the question.

179 Q. You haven't those figures? A. Not at the moment. I can get them.

Q. Now, the earnings between 1933 and 1943 increased from \$21 to \$44.68 per capita, is that right? A. Yes, sir.

Q. And that also includes the years that we are in the present conflict? A. Yes, sir.

Q. And as a result of this conflict there are people working overtime? A. Yes, sir.

Q. And on Sundays and holidays, is that right? A. That is right.

Q. And there are regulations where they get double pay for that type of work? A. Yes, sir.

180 Q. And some of the work is different from what was performed in normal years where we were not in war, so the pay is slightly higher? A. Yes, sir.

Q. We have also had legislation regarding labor questions so as to regulate the pay of such people, and this brought it up to a higher scale in 1943? A. Yes, sir.

Q. And all this must be taken into consideration in coming to a conclusion there has been an increase from \$21 to \$44.68 during that ten-year period? A. That is right.



Q. Now, we have the question of sales. They materially increased in 1943? A. Speaking of real estate or department stores?

Q. No, department store sales. A. Department store sales, yes.

Q. Have you got that before you? A. That is right.

Q. And you said in 1943 they had increased to the extent of 134 percent? A. Of the base period, that is right.

Q. Of the base period. The base period being from 1935 to 1939? A. Yes, sir.

Q. And a portion of the base period we were in a heavy, deep depression; isn't that right? A. Yes, sir. 182

Q. And as a result of that there was a lot of unemployment? A. Yes, sir.

Q. And there being unemployment, people did very little buying? A. Yes, sir.

Q. They hadn't the funds? A. Yes, sir.

Q. And they had neglected to replenish things that they needed due to the fact they didn't have the funds? A. Yes, sir.

Q. That is a natural inference? A. Yes.

Q. And as funds came into their possession the buying was extraordinarily heavy during such periods when funds came into their hands, is that right? A. That is right. 183

Q. Now, of course, on the theory of supply and demand, when there is demand prices of commodities go up; that is right? A. Yes, sir.

Q. That is when the costs go up? A. Yes.

Q. And that is the basis for the cost of living going up after your base period from 1935 to 1939 to 1944, when it was 124 percent? A. Yes, sir.

Q. You say above the base period? A. Yes, sir.

Q. And the base period covers a very unusual period of hard times? A. Well, I guess 1935 was a tough time. By the year 1936 we had almost gotten back to a period of prosperity, one might say. Then, of course, we had a recession again in 1937, and then 1938 and 1939 were years of moderate business activity.

It was a fairly representative period. It was almost a cycle in itself, we might say.

Q. Being there was a depression cycle at times during that base period— A. Yes.

Q. —naturally the prices of commodities fell very low? A. Yes, sir.

Q. You stated in the State of New York the bonds, the War Bonds, were purchased to a greater extent than anywhere else? A. Yes, sir.

Q. And, of course, there is more activity in the State of New York with reference to war industries than anywhere else, is that right? A. No, sir.

Q. You wouldn't say that? A. No, sir.

Q. Well, to a great extent we have quite some activity here? A. Yes, sir.

Q. And new plants have been opened extensively for the purpose of manufacturing war commodities? A. Yes, sir.

Q. And as a result of it we have had heavy employment? A. Yes, sir.

Q. And you know this to be a fact, in all these plants there are regulations that each employee buy a certain amount of bonds and they take that from his payroll? A. There are payroll deduction plans, yes.

Q. In quite a number of plants? A. Yes, sir.

Q. Now, did you say that the occupancy of apartments in New York had increased over your

base period to any material degree? A. I gave the figures in the form of vacancies.

Q. Yes. You gave us 7.8 percent vacancies in 1933. Is that right? A. That is right, 7.8 percent.

Q. Seven what? A. 7.8 percent.

Q. That is right. A. Vacancies from 1932 to 1935, various dates being used for this census. You see, in one State the census might be taken in 1932; in another State it might be taken in 1933. I have to take the period 1932 to 1935 to get my average.

Q. Looking at your chart, when was the heaviest period of vacancy? A. 1932 to 1935. 188

Q. 1932 to 1935? A. Yes, sir.

Q. What was the percentage at that time? A. 7.8 percent.

Q. In other words, apartments available for any purpose between 1933 and 1935, 7.8 percent of those apartments were vacant? A. Yes, sir.

Q. Did they increase after 1935? A. They went down each year after that period until 1942-1943.

Q. You said in 1933 in Brooklyn there was 9.5, is that right? A. That is right. Brooklyn was 9.5.

Q. In other words, Brooklyn was slightly greater than Manhattan? A. That is right, yes.

Q. Then, from 1935 there was a gradual increase? A. There is only three years during which we were able to get figures. One is the 1932-1935 period. The second is the year 1940. And the third— 189

Q. Just one year? A. Just one year, 1940. That is when the census was taken.

Q. You have 1933-1935? A. Yes. The third period is 1942 to 1943. Those three periods.

Q. Let us stick to 1940. A. 1940, you want?

Q. Yes. A. 1940?

Q. Yes. A. New York State, 5.8 vacancy, and in Brooklyn 5.8.

Q. Then you have a period 1942 to 1943? A. That is right. New York State was 2.6.

Q. Brooklyn 4? A. Brooklyn 4.0.

Q. Do you know what it is at present? A. We don't know. Nobody has taken the census.

Q. Now, will you say that to a great extent this improvement is due to the fact of the war and the re-employment? A. To a substantial degree, yes.

191 Q. To a substantial degree? A. Yes.

Q. Are the savings banks anxious to have mortgages? A. Yes, sir.

Q. That is the main means of investing their money? A. It is one of the two primary methods.

Q. What is the other primary method? A. Obligations of the United States Government and corporations.

Q. In other words, they may invest up to 65 percent in mortgages? A. Yes, sir.

Q. And the return on those mortgages is better than the average investment? A. Yes, sir.

Q. On Federal funds they have an average of 2 percent or less, whereas on this they vary from 4 to 6? A. That is a gross figure.

Q. Gross, yes. A. There isn't much expense in handling a bond account, but there is some expense in handling a mortgage account.

Q. In other words, if a mortgage is a good security a bank likes to maintain that mortgage? A. Yes.

Q. Particularly if it is getting 6 percent? A. Well, that would depend upon the purpose the bank has in mind in running its mortgage port-

folio. It isn't only the rate of interest. It is the rate of amortization, the character of the property, and so on.

Q. Well, if the character of the property was a good investment in 1920, also in 1930, would it be a good investment today where there is a scarcity of property and building? A. Oh, I will say——

Q. Let me put it this way. I withdraw that question. There is very little building going on now, is that right? A. Yes, sir.

Q. Due to priorities? A. Yes, sir.

Q. And as a result of it the property has enhanced in value to some extent? A. Well, again this is not my field. I will give you my opinion, however. That is, if there is some question, property is advancing more than it is depreciating, there is two things at work. There is the increase in value due to the growing scarcity, and one is a decrease in value due to obsolescence and depreciation.

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Q. Land values, eliminating the structure, the land values have increased to some extent, is that right? A. Well, I wouldn't say that.

Q. Would you say the land and the structure, where there is a scarcity in building, would increase naturally? A. Certain types.

Q. And, particularly where there is a shortage of available apartments for rent it would increase the values of other apartments? A. Well, strangely enough, buildings with inadequate sanitary facilities are not well rented today, whereas the new law tenements are very highly rented.

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This vacancy thing we have in New York City, for example, is colored by the fact that the old law tenements, so to speak, are vacant to the ex-

tent of roughly 16 percent, I would say offhand, whereas the new law tenements are not vacant to any more than, say, 1 or 2 percent. It depends on the type of building entirely.

Mr. Coller: That is all.

Mr. McGrath: That is all, doctor.

The Court: We will take a recess until 2 o'clock. We have to recess at 3 o'clock this afternoon. So I want you gentlemen to know it so you can guide yourselves accordingly.

Mr. McGrath: We are subpoenaing some other records, and we will subpoena them for tomorrow morning. I haven't got any more work today than to take up to three or a little before. I think we can finish a little before.

The Court: All right.

Mr. McGrath: I will bring in anything else tomorrow morning. I believe we will finish tomorrow morning.

The Court: All right.

Mr. McGrath: I would like to say this to your Honor. I have an application returnable before Judge Kleinfeld at 10 o'clock tomorrow morning, which I will have to attend to before we proceed with this trial, so I would like to have this case set down for 10.30 tomorrow morning.

The Court: Yes, I will do that.

(There was a recess taken for luncheon until 2 o'clock P. M.)

(The trial was resumed at 2 o'clock P. M.)



CHARLES PUNIA, 19 Exeter Street, Brooklyn, New York, called as a witness in behalf of the plaintiff, being duly sworn, testified as follows:

*Direct examination by Mr. McGrath.*

Q. Mr. Punia, what is your business? A. Real estate.

Q. How long have you been engaged in the real estate business? A. Twenty-four years.

Q. What is the name of your business organization? A. Punia & Marx.

Q. And do you have your place of business here in Brooklyn? A. That is right.

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Q. And is that where your activities are substantially that you are engaged in? A. That is right.

Q. You have been specializing in the placing of mortgage loans on properties within the City of New York in recent years? A. That is right.

Q. For how many years? A. Twenty-four years; upwards of twenty-four years.

Q. Do you place loans with various institutions? A. That is so.

Q. Have you found in your experience that mortgage money is readily available from all types of lending institutions at the present time?

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Mr. Coller: I object to the question.

The Court: Yes, sustained.

Mr. McGrath: Does your Honor sustain the objection?

The Court: Objection sustained.

Mr. McGrath: Exception.

Q. Can you tell us roughly how much money you have placed with lending institutions on

bonds to secure mortgages on real property within the City of New York during the past year? A. Upwards of \$8,000,000.

Q. Generally, what was the type of property securing these loans? A. Improved property.

Q. Residential type? A. Residential as well as industrial.

Q. These loans embrace multiple family dwellings? A. That is right.

Q. As well as smaller units? A. That is right.

Q. Have you been engaged to any substantial extent in the refinancing of existing mortgages?

203 A. That has been primarily our business since the war.

Q. What percentage of the total loans placed by you in the last two years would you say involved refinancing of existing mortgages? A. Well, in its entirety.

Q. In other words, there being no new construction, your activities have been devoted primarily to refinancing loans on existing structures? A. That is right.

Q. How about the age of the buildings on which you have been placing the mortgages? Over what range in age would you say they cover? A. We cover buildings that were built prior to 1931. I would say buildings up to about thirty years of age.

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Q. Do you find that age in itself is any obstacle to refinancing existing mortgages? A. Oh, no.

Q. Is the mortgage loan market in your judgment improving?

Mr. Coller: I object to that.

The Court: I will allow that. You may answer that.

Q. I think it is getting better.

Q. Is the mortgage market in your judgment sufficiently favorable at the present time to permit the refinancing of any residential real property mortgages now existing at an amount which would fairly reflect the sound normal market value of the property provided the occupancy, location, and physical condition is such that a loan can be procured on it at all?

Mr. Coller: I object to the question.

The Court: I will allow it. He is an expert.

The Witness: May I ask you to repeat that, please?

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Mr. McGrath: Would you repeat it?

(The reporter repeated the last question.)

The Witness: I think it is.

Q. It is a fact, is it not, that lending institutions generally are empowered to lend up to 66⅔% of the fair market value of the given piece of improved real estate? A. That is so.

Q. Of course, there are some properties upon which such institutions would not lend at all, is that correct? A. That is right.

Mr. Coller: I object to that.

The Court: That is a matter of common knowledge. I will overrule the objection.

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Q. And the factors which might preclude any loan being made at all would be such as a dilapidated condition of the property, obsolescence, poor location, poor transit facilities, or poor neighborhood trend? A. Yes.

Q. Is that correct? A. That is right.

Q. Where such factors exist lending institutions might be discouraged from going into the areas at all, is that right? A. That is right. They would shy away from it.

Q. Excluding these elements which may provide an obstacle for the placing of any loan at all, would you say that any parcel of residential real estate not suffering from any of these elements can be readily mortgaged at a figure representing from 60 to 66 $\frac{2}{3}$  percent of its fair, sound, intrinsic value in a normal market? A. Definitely.

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Q. Are you familiar with the current value of real estate and the prevailing real estate market for residential properties? A. Yes, I am.

Q. You also act as broker in the sale of real estate, do you? A. I do.

Q. Are you familiar with the present market for one and two-family houses? A. Not too familiar.

Q. Do you know enough about it to be able to say whether there is an active market for that type of property? A. Oh, yes, the market is very active.

Q. Can one and two-family houses at the present time be readily bought or are they scarce? A. They are scarce.

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Q. Are they bringing good prices? A. They are.

Q. Would you say that the prices procurable for one and two-family houses in today's market represented the fair, sound, intrinsic value of the properties? A. I would think so.

Q. Do such prices represent the amount which a willing seller can procure from a willing buyer

*-Charles Punia—For Plaintiff—Direct—Cross.*

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without any compulsion on either side unless it be on the buyer's part? A. That is right.

Q. And are mortgage loans readily available from various lending institutions operating in this area at from 60 to 66 $\frac{2}{3}$  percent of such prices? A. Very readily available.

Mr. McGrath: Your witness.

*Cross-examination by Mr. Coller.*

Q. Mr. Punia, you are a member of the firm of Punia & Marx? A. That is right.

Q. Where is your place of business? A. 60 Court Street, Brooklyn.

Q. Do you own any real estate of your own? A. Well, I own real estate, but not individually. I own the stock of the corporation that owns the real estate.

Q. This firm is a corporation? A. This is a company.

Q. A partnership? A. That is right.

Q. And this partnership owns property of its own? A. Not individually. We own the stock of the corporations that own the real estate.

Q. Of the corporations that own real estate. In how many such corporations have you stock?

A. Oh, I would say a half dozen or more. At least a half a dozen.

Q. And each corporation has an individual parcel, is that right? A. That is right.

Q. Just a parcel for each corporation? A. That is right.

Q. And they constitute a half a dozen or more? A. That is right.

Q. So how many more? You say how many more. A. Oh, at least ten.

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Q. Your business is mainly brokerage business, isn't that right? A. That is true.

Q. And that means selling property and getting a commission on it? A. That is right.

Q. You are a licensed broker? A. That is right.

Q. So is your partner? A. That is right.

Q. And in the course of that business you attempt to place mortgages? A. That is not so. Primarily my business is placing mortgages.

Q. Placing mortgages? A. That is right.

Q. With institutions? A. That is right.

215 Q. You yourself don't loan any money on mortgages? A. Occasionally.

Q. Does your firm loan money on mortgages? A. The firm of Punia & Marx is strictly a brokerage, real estate brokerage firm.

Q. Individually, do you place it? A. Occasionally.

Q. How often are these occasions? A. I couldn't answer that. As often as the occasion would arise.

Q. How many mortgages are you holding now? A. About ten.

Q. Aggregating what sum? A. At least \$100,000.

Q. In your own name? A. In corporation names.

216 Q. Referring to the corporations that you mentioned originally? A. That is right.

Q. And some of those mortgages are "P. M." mortgages, purchase-money mortgages? A. Yes.

Q. A majority of the ten? A. No.

Q. How many of them are purchase-money mortgages? A. Two to my knowledge at the moment.

Q. You have no figures before you, have you? A. What kind of figures?



Q. As to what you testified? A. I don't quite follow the question.

Q. You stated that there was approximately \$8,000,000 in mortgages placed during the year 1943? A. Upward of \$8,000,000, I say.

Q. Is that based on statistics as you have examined them? A. That is right.

Q. What statistics did you have? A. My own records.

Q. Your own records? A. That is right.

Q. In other words, the records you carry in your office? A. That is right.

Q. And those records consist of what? A. Records. . . 218

Q. Of mortgages you placed? A. That is right.

Q. Can you bring those records into court? A. Yes, I can.

Q. You didn't bring them with you today? A. I did not.

Q. How many of those mortgages are home loan mortgages? A. What do you mean by home loan?

Q. Mortgages placed on homes over a period of eighteen, twenty-five years? A. Oh, homes?

Q. Yes. A. 66.

Q. 66 percent of it? A. 66 mortgages.

Q. Home loan mortgages? A. That is right.

Q. What you call home loan mortgages? A. When you say home loan mortgage I assume you mean a dwelling. 219

Q. That is right. A. 66.

Q. Now, you say the condition of mortgages have improved, is that right? A. That is true.

Q. And you are referring to improvement over what years, former years? A. Oh, yes.

Q. Now, when did this improvement start? A. When the improvement started?

Q. Yes. A. It started gradually from 1934 on and kept improving until——

Q. You would say in 1933 it was a very bad market, is that right? A. I would say in 1933 you had no mortgage market.

Q. 1934 was an improvement? A. 1934 just commenced.

Q. Go right through the years and tell us how they improved during the various years. A. I don't quite follow the question.

221 Q. You are a real estate man and you are familiar with mortgages, and it is your business to watch the market, that is the mortgage market, is that right? A. That is true.

Q. And you would naturally follow the market, being in business for twenty-four years, as it improved each year, is that right? A. That is right.

Q. Can you give us some idea as to what degree of improvement there was from one year to the next, starting with 1934? A. No; I am afraid I would have to resort to records for something like that, if such records are available.

Q. Have you such records? A. I do not.

Q. Are there such records available? A. I wouldn't know. There may be.

Q. You have never interested yourself sufficiently to find out if there was? A. Never.

222 Q. Then let us have your offhand opinion. What was the condition in 1935 over 1934? A. The market in 1935 was a little better than it was in 1934.

Q. 1934 was better than 1933, is that right? A. In 1933 there was no mortgage market to my knowledge.

Q. 1934 was a fair market. Was there an improvement? A. That is right.

Q. To what extent would you say the improvement was in percentage? A. I would only be guessing.

Q. Give us your best guess. A. I would say 100 percent improvement because in 1933 there was no market at all.

Q. That 100 percent improvement, how much mortgage money was available in 1934? A. How much was available?

Q. Yes. A. I can't answer such a question. I don't think anybody can.

Q. Are you sure you can't? A. I am positive I can't.

Q. Don't worry about anybody else. How about 1935 over 1934? A. It was much better than 1934.

Q. To what extent? A. I wouldn't know.

Q. 1936? A. Better than 1935.

Q. When you say better, to what extent? A. I wouldn't know.

Q. Would your answer be the same for 1937, you wouldn't know? A. Right up to 1941 my answer would be the same.

Q. All right. Then, in other words, up to 1941, you would say there was a gradual improvement, but you wouldn't know to what extent, is that right? A. That is right.

Q. Now, we will take 1941. And in 1941 you do know, is that right? A. That is right.

Q. Tell us what improvement there was in 1941. A. 1941 the market was better than it was in 1940 up until December 7th, when war broke out.

Q. Prior to December 7th, to what extent was there an improvement in 1941? A. I wouldn't know. I couldn't answer that.

Q. Then your answer is the same for 1941 as in the other years? A. Except the market was better in 1941 up to December 7th.

Q. Can't you give us any better idea of what "better" means? You say it is "better". What is the explanation? Was it a fraction of a percent or a large percent, or can you give it to us in dollars and cents? A. Can you clarify to me what you mean by "better"?

Q. You said "better". I am trying to find out from you what you mean by "better". A. There was more mortgage money available.

Q. To what extent? A. I would have to contact the treasurer of every institution to find out how much mortgage money they had available at every given period in order to be able to answer that question.

Q. You never made such contacts? A. Definitely not.

Q. Never at all? A. That is right.

Q. Everything you stated today is your own opinion? A. And my own experience.

Q. Based on your own experience? A. That is right.

Q. And if the experience of others were different, why, the conditions would be different?

Mr. McGrath: I object to that.

A. Oh, no.

Mr. McGrath: I object to that.

The Court: Sustained.

Q. In other words, that is your personal experience. Now, what was your experience in 1942? What was the condition of the mortgage market in 1942? A. Early in 1942 the mortgage market lagged a bit, but toward the latter part of 1942 it improved again.

Q. To what extent? A. As good as it was in 1941 prior to December 7th.

Q. Now, 1943, would you say anything about 1943? A. I beg pardon?

Q. How about 1943? A. 1943 was better than 1942.

Q. In other words, there was a gradual improvement in mortgage conditions in all these years? A. That is right.

Q. Now, had it reached at any time between 1934 and 1943 such a peak where you would say there was a normal condition as prevailed in normal times? A. Would I assume from that question that you have reference to the amount of mortgage money available?

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Q. Do you want to have the question read to you? A. Please.

(The reporter repeated the last question.)

Q. With reference to mortgages. A. I think there was an abnormal condition. There was more money around than there were mortgages available.

Q. Well, taking that abnormal condition, in other words, there was such a good mortgage market that you could get more even than you even wanted, is that right? A. I didn't say that.

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Q. What do you mean by "abnormal"? A. By "abnormal" I mean there was more money than there were—

Q. Applications? A. That is right.

Q. And when did that condition first present itself, there was more money than applications? A. In the middle of 1942.

Q. Was that condition also existing in 1941?

A. I would say so. Up until December.

Q. That was at the outbreak of the war? A. That is right.

Q. Then we had a little lull? A. That is right.

Q. Then we will go back before the war, in 1940. The war was in 1941? A. That is right.

Q. In 1940 how were conditions then; also like you stated, "abnormal", that there were more applications? A. No, there was a more staple market at that time.

Q. A staple market? A. Yes.

Q. Normal conditions? A. That is right.

233 Q. You could get mortgages if you wanted them? A. Provided you had decent underlying security.

Q. In other words, if you had fair security you had a good mortgage market? A. That is right.

Q. Would that also exist in 1939? A. Yes.

Q. Also? A. Yes, sir.

Q. Go back as far as you can; you know when to stop; without my asking each year; when was there such a condition there was not a sufficient amount of mortgage money available? A. When there was not a sufficient amount?

Q. Yes. Name any year. A. I believe it was 1932 and 1933.

Q. That was a very bad market? A. That is right.

234 Q. In 1934 you say you could get what you wanted? A. I didn't at any time mean to imply you could get what you wanted.

Q. On fair security. That was unfair. Fair security. A. You could never get what you wanted.

Q. Give us the year when it first presented itself. A. I didn't intend to say at any time and I don't think I did, you could get what you wanted.



Q. I will reframe the question. Assuming you had a good parcel, that the mortgagee thinks a good security for its investment, and it is willing to make its loan, everything else being agreeable, rates and everything being satisfactory, when between 1933 and the present date, when was the first time that such a mortgage market presented itself that you could go to a bank with good security, as I stated, and get mortgage money? A. From 1934 to the present day.

Q. You could always get it? A. That is right.

Q. On a good security? A. That is right.

Q. In other words, in 1934 there was no occasion, there was no emergency with reference to mortgage money, is that right? A. I don't know; maybe too much money might be considered an emergency.

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Q. I am trying to get from you whether you could get mortgage money on good security in 1934 when you made the application; anybody could get it? A. That is right.

Q. You could get it? A. That is right.

Q. I could get it; anybody could get it; you didn't need any influence to get it; all you needed was good security? A. That is right.

Q. That is true from 1934 to the present day? A. That is right.

Q. There has been no change? A. There has been.

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Q. Except for the period of the depression from December 7, 1941, to the spring or summer of 1942? A. That is right.

Q. Eliminating that period, there was always a time when you and I and the real estate dealer would call a good mortgage market? A. That is right.

Mr. Coller: That is all.

238 *Chas. Punia—For Plaintiff—Redirect—Recross.*  
*Albert Hitchcock—For Plaintiff—Direct.*

*Redirect examination by Mr. McGrath.*

Q. Just one question. When you spoke of home loans in answering the question you weren't referring to the homes of the Home Owners Loan Corporation? A. No. I had reference to dwellings, not multi-family houses.

Mr. McGrath: That is all.

*Recross-examination by Mr. Coller.*

239 Q. When I said that you stated there was a good mortgage market in 1934, was it as good as in 1943 for the purposes of getting mortgages? A. 1934 as good?

Q. Yes. A. No, it was not.

Q. It was not? A. No, it was not.

Mr. Coller: That is all.

ALBERT HITCHCOCK, 3358 154th Street, Flushing, New York, called as a witness in behalf of the plaintiff, being duly sworn, testified as follows:

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*Direct examination by Mr. McGrath.*

Q. Mr. Hitchcock, what is your business? A. I am chief statistician and assistant to the manager of the Group 5 Mortgage Information Bureau.

Q. Will you tell us what the Group 5 Mortgage Information Bureau is? A. Group 5 Mortgage

Information Bureau, is a service set up by the savings banks, certain of the savings banks, for the purpose of collecting and distributing information on mortgage and real estate matter.

Q. Now, the savings banks of New York State are recognized and divided into groups, is that right? A. Yes, sir.

Q. And the savings banks in the area of Brooklyn and Queens are in the group known as Group 5, is that correct? A. That area and also all of Long Island and, I believe, Richmond comprise the Group 5 area.

Q. The Group 5 is Brooklyn and Long Island and Richmond County? A. Yes, sir. 242

Q. Has the Group 5 Information Bureau prepared a group of statistics with relation to the mortgages held by savings banks in the Group 5 area? A. It has.

Q. Who is the head of the Group 5 Mortgage Information Bureau? A. The executive secretary is Mrs. Millicent Harkness.

Q. And were these figures compiled under her supervision? A. They were.

Q. You are the chief statistician in that office? A. Yes, sir.

Q. Is Mrs. Harkness available at the present time? A. She is not on account of an accident.

Q. She is confined to a hospital, is she? A. To her home. She is at her home. 243

Q. Due to an accident to her knee? A. Yes, she is.

Q. So she can't be here in court? A. That is right.

Q. Was there prepared in your office a series of figures entitled "A comparison of the total assets

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*Albert Hitchcock—For Plaintiff—Direct.*

of Brooklyn Savings Banks for the periods January 1, 1944, and January 1, 1936"? A. There was.

Q. And do these figures show the total assets of the Brooklyn savings banks, the amount of those assets which are invested in mortgages, and the percentage of those assets which are invested in mortgages as of January 1, 1944, and which were so invested as of January 1, 1936? A. Yes, sir.

Q. Do you have a similar compilation of all the savings banks in Group 5 as of January 1, 1944? A. I do.

Q. Will you produce that sheet of figures, please? A. I have it right here.

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Mr. McGrath: I offer it in evidence.

(Received in evidence as Plaintiff's Exhibit 4.)

Q. There was testimony here this morning by Dr. Bussing to the effect that savings banks are permitted by law to invest up to 65 percent of their total assets in bonds and mortgages. Does it appear from that exhibit what percentage of the total assets of the Brooklyn savings banks were invested in bonds and mortgages on January 31, 1936? A. 56.8 percent.

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Q. Will you tell us what percentage of the total assets of those savings banks were so invested as of January 1, 1944? A. On January 1, 1944, 38.6 percent of the total assets of Brooklyn savings banks were invested in real estate.

Q. What was the dollar amount? Did you say real estate?

Mr. McGrath: May we have the witness' last answer read?

(The reporter repeated the last answer.)

Q. You mean bonds and mortgages, do you?

A. That includes the bond and mortgage account and also other real estate.

Q. Other real estate being the real estate acquired by the institutions as a result of foreclosure sales? A. Yes, sir. It excludes, of course, the bank buildings owned by the various banks.

Mr. Collier: You mean where they operate?

The Witness: That is right. The place where they conduct the bank.

Q. Will you tell us what was the dollar amount which was available between the amount actually invested in bonds and mortgages and other real estate and the amount which could have been invested within the 65 percent limit first on January 1, 1936?

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Mr. Collier: I object to that, what could have been. Let us take what they actually did invest. What could have been is purely speculative.

The Court: He just wants the difference.

Mr. McGrath: I want the dollar amount between the actual percentage.

The Court: It is allowed.

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A. On January 1, 1936, there was available for investment \$107,477,148.

Q. How much was available on January 1, 1944?

A. As of January 1, 1944, \$454,453,859.

Q. Do you have the figures of all of the savings banks in Group 5 as of January 1, 1944? A. I do.

Q. Will you tell us what percentage of the entire Group 5, what percentage of the total

assets was invested in first mortgages and other real estate? A. Will you repeat the question, please?

Q. The percentage. A. I am sorry. I lost the continuity of thought.

Q. Do you know what the percentage was on January 1, 1944, of Group 5? A. The percentage to the total assets?

Q. Yes. A. 38.4 percent.

Q. How much was available in all the Group 5 savings banks as of that date for mortgage investment? A. \$542,000,000. This is the additional sum that was available, the balance available.

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Q. Yes. A. Over and above what was actually invested.

Q. That is right. A. \$542,031,257.

Q. Do you have a sheet showing the total real estate held by members of Group 5 savings banks as of January 1, 1944, showing the various types of real estate held, and the amount of the mortgage investment at the time of the foreclosure? A. I had a sheet showing the total held of Group Mortgage Information Bureau members.

Q. Yes. A. Which does not include every bank in the Group 5 area.

Q. How many banks does it include? A. It takes in 29 banks.

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Q. Out of a total of how many? A. Well, I can give you a breakdown of that. It takes in 17 Brooklyn banks out of 20, three Queens banks, seven Manhattan banks, and one Bronx bank, and one up-state bank.

Mr. McGrath: I offer that sheet in evidence showing the total real estate held as of January 1, 1944.



Mr. Coller: I fail to see the materiality of this.

Mr. McGrath: I will say to the Court I am going to supplement that exhibit by real estate figures held on previous dates which will show the manner in which the savings banks have been disposing of their real estate during this period.

The Court: Yes, I will allow it.

(Received in evidence as Plaintiff's Exhibit 5.)

Q. This exhibit shows that in Brooklyn as of January 1, 1944, there was a total overhang of savings banks' real estate of \$17,105,680. Do you have the total figure of real estate held by Brooklyn banks in 1939? A. As of the end of 1939, \$49,360,469.

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Q. Where have you taken that figure from?

A. I have taken that from the sheet here headed "Comparison of sales foreclosures and new loans of member banks from 1934 through 1943, together with a comparison of other real estate still held from 1939 to 1943."

Q. Now, at the beginning of 1939 the figure was \$56,041,181, is that right? A. That is correct.

Q. At the beginning of 1942 the figure is \$32,752,576, is that right? A. Yes.

255

Q. So that the figure between 1942 and 1944 is reduced from \$32,000,000 to \$17,000,000, is that correct? A. That is correct.

Q. Now, the figures you have just given us are taken from a compilation prepared in your office which shows a comparison of the other real estate held by savings banks, members of Group 5, also the foreclosures conducted by such banks, the

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*Albert Hitchcock—For Plaintiff—Direct.*

sales of real estate by such banks, and the new loans made by such banks, over a period from 1934 to 1943, is that correct? A. Yes, that is right.

Q. And that sheet also contains similar figures for Queens and Nassau as well, doesn't it? A. Yes, it does.

Mr. McGrath: I offer that sheet in evidence.

(Received in evidence as Plaintiff's Exhibit 6.)

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Q. Do you have a sheet showing the percentage of arrears on mortgages held by savings banks, members of Group 5, by semi-annual periods beginning October, 1935, and ending October, 1943?

A. Yes, I have such a sheet.

Mr. McGrath: I offer that in evidence.

(Received in evidence as Plaintiff's Exhibit 7.)

Q. Now, Mr. Hitchcock, the exhibit just introduced indicates that in October, 1935, 25 percent of the dollar amount of mortgages held by Group 5 members were in arrears. Is that correct? A. Yes, that is right.

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Q. And as of October, 1943, the same exhibit indicates but that 3 percent of the dollar amount of such mortgages were in arrears? A. That is right.

Q. Now, do you have a sheet containing figures showing the vacancies in apartments in six-story apartment houses constructed in the Borough of Brooklyn since 1934? A. I have such a sheet.

Mr. McGrath: I offer that in evidence.

(Received in evidence as Plaintiff's Exhibit

8.)

Q. Now, although this last exhibit gives the figures of six-story apartment houses constructed since 1934 in Brooklyn, the figures included in this exhibit begin with 1938, is that correct? A. That is correct.

Q. And that shows that there were 7 percent vacancies in 1938 with 0.7 percent in 1943. Right? A. That is right.

Q. Now, in the latter part of 1942 did the Group 5 Mortgage Information Bureau make a special study of the mortgages held by Group 5 savings banks in connection with the problem of whether the savings banks would join the Federal Deposit Insurance Corporation? A: Yes, they did, Mr. McGrath. 260

Q. And do you have before you a copy of the report which was prepared at that time as a result of that study? A. Yes.

Q. Did that study embrace the assembling of figures showing the total amount of mortgages held by Brooklyn savings banks and by Queens savings banks and the percentages of such mortgages which were on an amortized basis and those which were on a non-amortized basis? A. Yes, it did. It showed it at that time in two classifications, mortgages held in Brooklyn and mortgages held in Queens. 261

Q. I show you a chart which is labeled "Chart D" on page 10 of that report, and I ask you whether that chart shows in the form of sections in a circle, commonly characterized as a "Pie

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*Albert Hitchcock—For Plaintiff—Direct.*

Chart", the percentage of non-amortizing mortgages and those which are being amortized, with separate sections being provided for the various percentages of amortization? Is that correct? A. That is correct.

Q. The chart does show it? A. Yes.

Mr. McGrath: I offer it in evidence.

(Received in evidence as Plaintiff's Exhibit 9.)

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Q. I show you a chart designated as Chart "E" and ask you whether that chart contains the same information as the previous exhibit except that relates to Queens mortgages rather than Brooklyn mortgages? A. Yes, it does.

Mr. McGrath: I offer it in evidence.

(Received in evidence as Plaintiff's Exhibit 10.)

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Q. On the back of Plaintiff's Exhibit 10 there is a table entitled "Schedule 3", which purports to show the total mortgage portfolio of the Brooklyn and Queens savings banks covering loans made prior to 1935, broken down in the form of a table showing the number and dollar amount of mortgages non-amortizing and mortgages being amortized at various amounts. Those figures were prepared in your office and were embodied as a part of this report to which you referred in your testimony; is that correct? A. That is correct.

Mr. McGrath: I offer that in evidence.

(Received in evidence as Plaintiff's Exhibit 11.)

Q. Now, the figures shown in Plaintiff's Exhibit 11 indicate that about 31 percent—31.3 percent—of the mortgages held by Brooklyn savings banks were not being amortized in 1942 when those figures were compiled; is that correct? A. That is correct.

Q. They also show that 5.2 percent of such mortgages were being amortized not by payments at regular intervals but on some sort of a lump-sum basis; is that correct? A. That is right.

Q. Now, excluding the non-amortizing mortgages and the mortgages which were being irregularly amortized on a lump-sum basis, we have a residue of 63.5 percent of Brooklyn savings banks' mortgages which are being amortized on some regular basis or were at that time; is that correct? A. That is correct.

Q. And the dollar amount of that 63.5 percent of the mortgages was \$223,763,028, is that right? A. That is right.

Q. Now, I believe in that report you have a schedule called "Schedule 4", which breaks down the rate of amortization by dollar amount and percentage, which goes to make up that total figure of \$223,000,000 or 63.5 percent. Would you read off for us those figures, giving us first the percentage of amortization, then the dollar amount, and then the percentage of that dollar amount to the total of mortgages being amortized? A. One percent or less, \$12,268,208.

Q. Or? A. Or 5.48 percent of the total account.

1.1 percent to 2 percent amortization, \$58,868,537, or 26.31 percent.

2.1 percent to 3 percent amortization, \$83,327,242, or 39.92 percent.

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3.1 percent to 4 percent amortization, \$35,099,986, or 15.69 percent of the total account.

4.1 percent to 5 percent amortization, \$14,201,240, or 6.35 percent.

5.1 to 6 percent amortization, \$6,421,946, or 2.87 percent.

And over 6 percent amortization, \$7,579,870, or 3.38 percent.

Q. Going now to the Queens mortgages, we find from the table, Plaintiff's Exhibit 11, I think it is, we find 34.9 percent of the Queens mortgage are not on an amortizing basis; correct? A. I haven't got the tables before me, counselor.

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Q. (Counsel hands paper to the witness.) A. Yes, that is correct.

Q. And in addition, there were 11.1 percent of such Queens mortgages which were being irregularly amortized and on a lump-sum basis?

A. That is right.

Q. Excluding those non-amortizing and lump-sum amortizing mortgages, we have a residue of 54.1 of Queens mortgages which were being amortized on some regular basis in 1942 when these figures were compiled? A. That is right.

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Q. I think you have a table with respect to the Queens mortgages which contains the same data that you have just given us with respect to the Brooklyn mortgages. A. I have such a table.

Q. Will you give that data in the same form as you gave it with respect to Brooklyn? A. Amortization of 1 percent or less, \$3,095,758, or 3.46 percent of the total account.

Amortization of 1.1 percent to 2 percent, dollar amount, \$15,968,353, or 17.85 percent.

2.1 percent to 3 percent amortization, \$35,146,108, or 39.30 percent.



Amortization of 3.1 percent to 4 percent, \$17,421,798, or 19.48 percent.

Amortization of 4.1 percent to 5 percent, \$10,339,140, or 11.56 percent.

5.1 percent to 6 percent amortization, \$3,314,123, or 3.71 percent.

And amortization on over 6 percent, \$4,149,788, or 4.64 percent.

Q. Coming back to Exhibit 11, which gives the figures of the mortgages which are on an amortizing basis and those which are not, in the Brooklyn and Queens savings banks, that table also indicates the percentage of the mortgage loans to the appraised value of the underlying real estate, does it not? A. Yes, it does.

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Q. And of the \$110,000,000 or 31.3 percent of Brooklyn savings bank mortgages not on an amortized basis we find that \$7,932,835 consists of mortgages on properties where the mortgage is less than 50 percent of the appraised value of the property; is that correct? A. Yes, that is right.

Q. We find further that \$26,017,678 of non-amortizing mortgages cover properties where the mortgage is somewhere between 51 and 66 $\frac{2}{3}$  percent of the appraised value of the property; is that correct? A. That is correct.

Q. So that would it be correct of the \$110,000,000 Brooklyn mortgages which are not being amortized, approximately \$34,000,000 are on properties where the appraisal is such that perhaps amortization would not be an imperative thing? A. That is right.

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Q. For the safety of the investment? A. That is right. Those are the so-called cream loans.

The Court: I will have to take a recess at this time.

Mr. McGrath: If I may ask one more question I will be through with this witness.  
The Court: Go ahead.

Q. And with reference to the Queens properties we have \$5,316,141 mortgages on properties where the appraised value—where the mortgage is 50 percent or less than the appraised value; that is right? A. That is right.

Q. And we have \$23,806,318 of mortgages on properties where the mortgage is between 51 and 66 $\frac{2}{3}$  percent of the appraised value, is that right? A. That is right.

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Q. Now, that makes a total of \$29,000,000 Queens mortgages out of \$57,000,000 which are non-amortizing, where because of the underlying security it might not be imperative for the Queens banks to require amortization in order to protect this security; is that right? A. That is right.

Mr. McGrath: I think that is all of this witness.

The Court: All right.

Mr. Coller: Is there any way of my having copies of those exhibits over night?

The Court: Will you let him have copies over night?

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Mr. McGrath: I think we will let him take the original exhibits over night.

Mr. Coller: I would like them. Maybe it will shorten my cross-examination.

The Court: All right. That is fine. It is understood we go on at 10.30 A. M. tomorrow.

Mr. McGrath: 10.30 tomorrow.

The Court: All right.

(There was an adjournment until 10.30 A. M., May 23, 1944.)

Brooklyn, N. Y., May 23, 1944

10:00 A. M.

(The trial was resumed.)

Appearances: Same as before.

ALBERT HITCHCOCK, resuming the stand, testified further as follows:

*Cross-examination by Mr. Collier.*

Q. Mr. Hitchcock, there were several exhibits introduced yesterday based on your testimony. Have you copies of those exhibits there? A. I think I have.

Q. And will you look, take them out and look at Plaintiff's Exhibit 4, which is comparison of the total assets of the Brooklyn savings banks. Do you have them here before you? A. I have.

Q. Am I correct in stating that that reflects what amount of mortgages were placed during the years specified on that exhibit in comparison to the assets they had, is that right? A. No, it's not right.

Q. Well what is the 65 percent of total assets amounting to \$1,118,953,000? A. That is an arithmetical computation.

Q. That is a what? A. That is an arithmetical computation arrived at by taking 65 percent of \$1,721,462,004.

Q. That is correct. In other words, in 1944 the total assets of the Brooklyn savings banks amounted to \$1,000,000,000 and so forth that you have just stated, is that right? A. That's right, on January 1st.

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*Albert Hitchcock—For Plaintiff—Cross.*

Q. And 65 percent of that would be \$1,118,950,303, is that right? A. That's correct.

Q. And of this amount there was outstanding in the Brooklyn area mortgages and other real estate held by banks amounting to \$664,000,000, is that right? A. No, that's not right.

Q. Then I want to be corrected on that. How much of this money was out on bond and mortgage held by savings banks in 1944? A. Well, I figure, I have here \$664,496,444, represents the amount that was invested in bond and mortgage account plus other real estate held—not only in Brooklyn, but also in other areas.

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Q. Other areas? A. You specified Brooklyn. I say that—

Q. In other words, that was the amount invested by savings banks of Brooklyn in bonds and mortgages, whether of Brooklyn or other areas? A. In bonds and mortgages and other real estate property.

Q. That is right? A. That is correct.

Q. It may be 50 percent in Brooklyn and the other 50 percent elsewhere, you wouldn't know that? A. I wouldn't know from this statement. We have a record in our office on that.

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Q. Based on what we have as far as you have gone you would not know where the bonds and mortgages are located. I withdraw the question. That would then be 38.6 percent of its total assets were invested in bonds and mortgages and other real estate? A. That is correct.

Q. Both in the area of Brooklyn and other areas? A. That's right.

Q. And if it had invested this entire sum of 65 percent as authorized by law it would still have \$554,453,859 available for that purpose to them? A. Yes, those are the additional funds.

Q. Which it did not invest? A. Those are in addition funds.

Q. It could have invested? A. It could have invested.

Q. And did not invest? A. That is correct.

Q. And that applies as to 1944? A. As of January 1, 1944, that is the condition that exists.

Q. Now you have no such comparison, intervening comparisons between 1936 and 1944, have you, of each year? A. I do not have those records available at the moment.

Q. You have not those figures available at the moment? A. No.

Q. But you have on this paper which I am now reading from, marked Plaintiff's Exhibit 4, the paper that you have in your hand—the copy that you have in your hand, at least—figures which you give for the year 1936, is that right? A. That's right, for comparative purposes we set up the two years.

Q. For comparison purposes? A. That's right.

Q. In order to show the amount invested of capital in bonds and mortgages during 1936 as compared with 1944, is that correct? A. That's right; it shows a comparison between the two dates.

Q. And without going into the numerals there, it shows that in 1936 these same institutions had 56.8 of their total assets invested in bonds and mortgages? A. And other real estate.

Q. And other real estate. Also applying to the area of Brooklyn and other areas? A. Yes.

Q. In other words, that in 1936 there was approximately 19.2 more money invested in these same investments compared with their total assets, is that right? A. Well, I haven't worked that out on a percentage basis. It shows—

Q. In other words, let me put it this way: If 38.6 was invested in 1944 of its capital assets—  
A. Yes.

Q. (Continuing)—and 56.8 was invested in 1936—that would be a difference of—what do you figure, about? A. That would be a difference of 18.2 percent.

Q. In other words, that 1936 was 18.2 percent more placed out on mortgages by these savings banks than as against their total assets as compared to 1944, is that right? A. Will you repeat that, please?

287 Q. In other words, that in 1936 these same banks— A. (Interrupting) As of January 1, 1936.

Q. (Continuing)—1936 these same banks invested a greater percentage of their total assets in mortgages than they did in 1944? A. That is not what it means at all, counselor.

Q. What does it mean? A. It means as of January 1, 1936, the Brooklyn banks had 18.2 percent more of their capital assets invested in bond and mortgage plus other real estate held than they did as of January 1, 1944.

Q. That's just what I mean, yes. In other words, on a percentage basis they had more money invested in mortgages in 1936 than they did in 1944, that is correct?

Mr. McGrath: That's right, we concede it.

A. That's right, yes.

Q. And in dollars and cents there were less total assets in 1936 in these banks than in 1944, is that right? A. That's right.

Q. And in dollars and cents there was more money invested in mortgages than in 1944, in dollars and cents? A. That is correct.



Q. In spite of the fact that the assets were smaller, that's right? A. Yes.

Q. Take your paper marked Total Real Estate Held by Group 5, Mortgage Information Bureau.

A. As of January 1, 1944, is that it?

Q. As of January 1, 1944. A. I have that.

Q. If we added all these figures it would practically come to the total mortgages as you had in Exhibit 4, the previous paper you looked at, is that right? A. Now, this paper here shows real estate held. It does not show bonds and mortgages at all.

Q. Oh, it is real estate held? A. That's right.

Q. By the banks? A. By the member banks.

Q. And that would mean real estate held for their own business purposes to conduct their banks? A. No, it isn't. The members in one case were dealing with all Brooklyn savings banks, in the last exhibit, in the second paper that you now refer to.

Q. Just members as a group? A. That refers to Group 5 Mortgage Information Bureau members.

Q. That is 29 members of the group? A. That's right.

Q. Twenty-nine, were they? A. I think so.

Q. I think you said 29. It would not make much serious difference. And what you have here marked Exhibit 5 would mean the real estate held by members of the group whether for their own business purposes— A. (Interrupting) No, it excludes banking houses.

Q. That would mean property taken in at foreclosure? A. That's correct.

Q. Now, banks don't usually buy real estate, do they, as far as you know? A. No.

Q. If they acquire real estate it is invariably through a foreclosure? A. Or a deed in lieu of foreclosure. Occasionally they acquire real estate for a banking house, but that's a rare procedure, a rare occasion.

Q. Now we will take Plaintiff's Exhibit 6, comparison of sales, foreclosures and new loans of member banks from 1934 to 1943. Have you that? A. I have that schedule before me.

Q. In there you have compiled all the foreclosures that have taken place from 1934 to 1943, to and inclusive of 1943, is that right, in the Borough of Brooklyn? A. That's right, by member banks.

Q. Also that Plaintiff's Exhibit 6 shows new loans placed in those respective years, doesn't it? A. It does, yes, sir.

Q. Now in 1934 there were more foreclosures than new loans, is that right, in the Borough of Brooklyn? A. In dollar amounts?

Q. In dollar amount. A. And also—yes, sir.

Q. And also in percentage? A. Yes, sir.

Q. Well, we will refer to the dollars. A. All right.

Q. Is that right? A. Yes. There were more foreclosures than new loans.

Q. In 1935 there were more foreclosures than new loans, is that right? A. Yes.

Q. And the foreclosures in dollars and cents amounted to \$20,709,545, is that right? A. That is right.

Q. As against \$4,923,910? A. That's right.

Q. An approximate excess of \$16,000,000 in foreclosures, is that right? A. Approximately, yes.

Q. We take 1936, and you find that the excess of foreclosures over new loans is approximately slightly over \$11,000,000, is that right? A. Yes.

Q. In 1937 the excess of foreclosures over new loans is approximately \$2,800,000? A. No, I don't agree with you.

Q. I mean \$800,000, rather? A. Yes, approximately \$800,000.

Q. In 1938 the new loans exceeded the mortgages, is that right?

Mr. McGrath: Foreclosures.

A. The foreclosures.

Q. The foreclosures? A. Right.

Q. As well as 1940, 1941, and in 1942 there is a slight drop as to variation, is that right, they still exceed to some extent? A. They still exceed but by a lesser amount.

Q. And in 1943 you still had foreclosures amounting to \$7,282,513, is that right? A. That's right.

Q. And there was an excess of foreclosures in 1943 over 1942 to the extent of approximately \$400,000, is that right? A. Yes, that's right.

Q. In other words, there were more foreclosures in 1943 than in 1942 in dollars and cents. Nevertheless in all the years, however, between 1934 and 1943 the low on foreclosures was 1942 when the foreclosures still amounted to \$6,896,055, is that right? A. Well, 1934 was actually lower than that, slightly lower.

Q. All right, I'll correct that. In 1934 the foreclosures were \$6,372,518, is that right? A. That is right.

Q. And in 1942, which was the lowest in the years between 1934 and 1943, the foreclosures were \$6,896,055? A. I think you mean between 1935 and 1943.

Q. Between 1935 and 1943, yes. That is correct.

A. That is \$6,896,055. That is lower than in any of the intervening years 1935 to 1943.

Q. In other words, that close to \$7,000,000 of foreclosures in Brooklyn were the very lowest that you had in all those years?

Mr. McGrath: He has already answered that, that's right. We concede that.

A. I have already covered that.

Mr. Collier: All right, it is conceded.

Q. Will you take up the paper called Six-story Apartment Houses Constructed Since 1934, Brooklyn. Marked Plaintiff's Exhibit 8. A. I have that.

Q. And that shows the number of buildings constructed since 1938, is that right? A. It shows them by years.

Q. Construction since 1934? A. Since 1934.

Q. Well, you have nothing marked on here prior to 1938. Does that mean there has been no construction prior to 1938? A. No, that does not mean that at all. As of October, 1938, there were 15,844 units which had been built since 1934.

Q. That embodies from 1934 to 1938? A. That's right. And in the next line, as of October, 1939, there had been 19,435 new buildings built since 1934.

Q. In other words, as you have each year designated there, it is cumulative? A. It is cumulative.

Q. And it includes it by years? A. Yes, sir.

Q. So that the best way of figuring is to take the bottom figure and that will give you your total? A. That's right.

Q. Which would be 30,255 buildings, is that right? A. That's right.

Q. Have you the charts which you call pies? A. Yes, I have one.

Q. Turn to chart D, which is Plaintiff's Exhibit

9. Have you that? A. I have it before me.

Q. And that gives you a list of mortgages made prior to 1935, is that right? A. It does not give a list of anything, counselor.

Q. I mean it shows a graph of the mortgages held by these banks made prior— A. Yes, the entire pie represents the—

Q. City of Brooklyn? A. No, it does not. It represents all the mortgages made prior to 1935 and held as of December 31, 1942 by twenty-nine Brooklyn and Queens banks which participated in this study.

Mr. McGrath: The chart applies only to the Brooklyn banks, chart E.

The Witness: No, I correct you. Chart D refers to the mortgages held by Brooklyn, twenty-nine Brooklyn and Queens banks in Brooklyn, mortgages located in Brooklyn.

Q. And they were all made prior to 1935, however? A. They were.

Q. As shown by this chart? A. They were.

Q. And they were still held in 1942, is that the idea? A. That is right.

Q. You have nothing here to designate that they were still held, is that right? A. That's right. When it says now held, now means December 31, 1942, that is the date on which this was prepared.

Q. This chart was compiled? A. That's right.

Q. And these are all mortgages prior to 1935. You don't know just what years they were made

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*Albert Hitchcock—For Plaintiff—Cross.  
Herbert E. Bode—For Plaintiff—Direct.*

prior? A. Well, some of them might be made in 1899, or some in 1934.

Q. You would not be able to tell from the chart whether they come within this moratorium law or not, would you? A. No, except I know they were made before 1935.

Q. That also applies to Exhibit 10, whatever you said with reference to Exhibit 9 applies to Exhibit 10, that is, Queens mortgages, is that right? A. That is right. Mortgages located in Queens.

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HERBERT E. BODE, of No. 213-15 Twenty-ninth Avenue, Bayside, Queens, called as a witness in behalf of the plaintiff, having been first duly sworn, testified as follows:

*Direct examination by Mr. McGrath.*

Q. Mr. Bode, what is your business? A. Real estate broker.

Q. Where do you have your office? A. Long Island City.

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Q. And what is the name of your firm? A. Hosinger & Bode, Inc.

Q. And you're one of the active participants in that firm? A. I am, I'm the treasurer, treasurer and director.

Q. And you are a licensed real estate broker? A. I am.

Q. How long have you been engaged in the real estate business? A. Twenty-one years.



Q. You're at this time the president of the Long Island Real Estate Board, is that correct? A. I am.

Q. And when were you elected to that office?

A. As of January 1, 1944.

Q. What is the Long Island Real Estate Board?

A. It's an association of real estate brokers and allied people in industry, banks, and architects, lawyers—but principally real estate brokers.

Q. Now, in connection with your business do you place loans secured by real property with various institutions? A. I do.

Q. And do you also act as broker in the purchase and sale of real estate? A. I do.

Q. Have you found in your experience that mortgage money is readily available from all types of lending institutions at the present time?

A. Very readily.

Mr. Collier: I object to that.

The Court: I allow it as an expert.

Q. The answer is yes? A. Yes.

Q. And was it readily available in 1943? A. Yes.

Q. Now, directing your attention to the real estate situation so far as sales are concerned as distinguished from placing mortgage loans, have you been engaged extensively in the sale of real estate within the last year or two? A. Oh, yes, for the last ten years—well, as a matter of fact ever since we have been in business.

Q. Yes. A. But the—

Q. That is chiefly your business, the brokerage, or in connection with sales? A. Sale of property is one of them.

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*Herbert E. Bode—For Plaintiff—Direct.*

Q. How much property in dollar amount would you say that you brought about the sale of in the year 1943, have you any idea? A. Yes. About \$3,000,000 worth.

Q. Consisting chiefly of what type of real estate? A. Well, divided  $\frac{1}{3}$  into one-family houses, and the balance in investment property such as taxpayers and apartment houses and smaller, may-be two-families and six-family houses.

Q. Would you say that your office then handled as broker the sale of approximately \$1,000,000 for 1 small one-family house buildings? A. Very definitely.

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Q. Through the Queens area primarily? A. Primarily, and some in Nassau.

Q. Have you found that during the year 1943 there was an active real estate market for the sale of that type of property? A. Yes, very active.

Q. Do you find that that active market continues right up to the present time? A. I do.

Q. Do you find that one and two-family dwelling houses can be readily bought today or are they scarce? A. They're quite scarce.

Q. Are they bringing good prices? A. Very good prices, yes.

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Q. Would you say that the prices procurable for one and two-family houses in today's market represent the fair sound intrinsic value of the property? A. Yes. It is my opinion that the prices are very fair.

Q. Very fair? A. Yes, sir.

Q. Do such prices represent the amount which a willing seller can procure from a willing buyer without any compulsion on either side unless it be on the buyer's part? A. I would say so.

Q. And in your experience have you found that mortgage loans are readily available on such one and two-family dwellings from various lending institutions at from 60 to 66 $\frac{2}{3}$  of the prices which such buildings are bringing today? A. With Savings and Loan a greater amount.

Q. The Savings and Loan associations have mortgage money available today? A. Up to 80 percent of their appraised value.

Q. Well, their appraised value is guided to a substantial extent by what the property brings on a current sale, is that so? A. I found that to be so, yes, sir.

Q. Now, do you also devote your time and the time of other members of your organization to the management of real estate? A. We do.

Q. About how extensive would you say this management business of yours is? A. Well, we have property, about four hundred buildings, under our management at the present time, which includes anywhere from a one-family house to a large six-story elevator apartment house.

Q. Now, in former years, subsequent to 1933 and prior to 1944, did you have a larger amount of real estate under your management? A. Yes, we did.

Q. Was that because it was more difficult to sell real estate in past years than it is in more recent years? A. Well, may I answer that this way: That during 1943 and 1944 many of the properties that were under our management were sold, and the purchasers elected to either manage it themselves or appoint a new managing agent.

Q. To what extent would you say that your management business has decreased in the last two and a half years? A. Possibly 25 percent. We

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*Herbert E. Bode—For Plaintiff—Direct.*

have retained a lot of management under sale as the reason for it. That isn't generally true.

Q. In other words, you were managing at least 25 percent more properties in the beginning of 1942 than you are managing now, is that correct?

A. That's correct.

Q. And is the reason for it that you have succeeded in selling those properties? A. That is true. Either we have or some other broker has, but the properties have been sold. That is the reason for the diminishing of the managing account.

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Q. Can you, according to your experience and your knowledge and observation of the real estate market, fix a time when the current active real estate market began? A. Well, it would be my opinion that the market improved at first gradually from 1936, possibly even 1935. It was very gradual then, we found—and I would say that 1943 brought about the peak. Now the properties are rather scarce and therefore I think there will be a diminishing amount of sales. But the market is very active and very strong right at the moment.

Q. In other words, in your judgment the activity of the peak of 1943 would continue if there were houses available? A. Very definitely.

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Q. But there has been a falling off because of the stoppage of building construction, would you say that is the reason? A. Well, very definitely, the scarcity of listers and properties for sale.

Q. And have you observed as the result of such shortage the prices which one and two-family houses have been bringing are on the rise? A. They are very definitely.

*Herbert E. Bode—For Plaintiff—Cross.*

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*Cross-examination by Mr. Collier.*

Q. Mr. Bode, you say you manage property for other people? A. Yes, sir, I did.

Q. And you have been doing that for a good number of years? A. That's correct.

Q. And the properties that you now have are less than those you had in 1934? A. 1942 I said.

Q. Do you manage as many parcels today as you did in 1934? A. We manage more than we did in 1934.

Q. And did I understand you to say you have about one-quarter less properties to manage than you did in some previous years? A. Yes. When I made that statement I believe it was in answer to under 1942.

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Q. Yes, I mean that. A. You said 1934.

Q. I did not catch the year. I'm trying to get it again. Tell me what year did you manage more property than you did in 1944? A. 1942 we approximately had our peak amount of properties.

Q. That was the peak year? A. That's right.

Q. Your main business is acting as broker in the sale of real estate, is that right? A. Well, it goes beyond that.

Q. I mean mainly? A. Well, we have a very large mortgage department and insurance department and management department.

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Q. Your mortgage department don't place mortgages? A. We act as broker.

Q. You act as broker? A. That is correct.

Q. You put through mortgage loans for your clients? A. That's correct.

Q. Now, when would you say was mortgage money most available, what years, between 1934 and 1943? A. Well, I think it has been very

plentiful from our own experience since 1936. Of course the market is better today for mortgage money, I mean it's more plentiful now than it was in 1936, but I would say from 1936 on it has been a very active mortgage market.

Q. In other words, from 1936 it is a good mortgage market? A. That is correct.

Q. And you could get good mortgages provided you had sufficient security? A. That is true.

Q. That would not apply to 1935, however? A. No.

Q. And mortgage money was not available? A. Well, I would not say that. I would not say it was not available. It was available at all times, but it was harder to get in 1935.

Q. And in 1936 it was rather easy to get? A. No, I wouldn't say it was rather easy. It was better over the depression years.

Q. In order to get a mortgage placed in 1936, let us say, how could you get it, would it have to be a small percentage of its value, or— A. No, not necessarily a smaller percentage of its value. We always found that if we have a good application, a well located building, and it is in good physical condition, that we have had no trouble to get 60 percent of its appraised value. That's the minimum, however. We could get more than 60 percent on some occasions.

Q. And that was the isolated instance where you could get a mortgage, it would have to be what we call top-notch property and location in 1936? A. Well, we placed mortgages. For instance, I have to visualize this from the standpoint of Queens County, I'm a Queens County man primarily, and on the North Shore, but we placed mortgages on ordinary four-story walkups in



Astoria, for instance, in 1936. I would not call it top-notch property, but it was good property, well located, well rented.

Q. Well, let me ask you this as an expert: Would you say that where foreclosures of mortgages by banking institutions exceeded the loans placed, the mortgages placed during a certain year by about almost two and a half times, foreclosures in dollars and cents, over the moneys placed on mortgages, would you say that is a healthy condition? A. No.

Q. Unhealthy condition? A. Well, I wouldn't say it's unhealthy. I think you have got to go beyond that. That was at the time when foreclosures were prevalent, the institutions were still cleaning up their accounts, and they could not themselves—you must remember that in 1936 there was very little new construction, it was just beginning, and in 1937 we came in with strong construction, and then was the time when the institutions were able to place money. In 1936 there were very few mortgages available to be gotten, so that the institutions could not lend the money out. They had the money to lend out.

Q. In other words, you mean to say there were less—very few applications for mortgages? A. That's right.

Q. If, however, they were equal, the amount of foreclosures was almost equivalent to more than the mortgages placed, would that be healthy or an unhealthy condition? A. I don't think we could say either way without going into the facts in a little greater detail, because in trying to answer your question, in 1936 for instance, as I get it—you're talking about 1936—

Q. I'm now referring to 1937. A. Well, in 1937 the conditions were very much improved, and we were having quite a lot of new construction, large buildings, and there was plenty of mortgage money available.

Q. And you had plenty of reconstruction, is that right? A. Yes.

Q. And plenty of new buildings going up? A. That is true.

329 Q. And if, however, during that year the foreclosures exceeded the moneys placed out on mortgages, that would not reflect a sound condition, would it? A. I can't answer that question either way, because my recollection of 1937 was that as far as real estate was concerned we had a much improved market. Now, I can't say that it did not present a healthy market. In my opinion we were much on the recovery at that time, 1936 and 1937.

Q. Well, you said that 1937 was a good market, mortgages were procurable; a lot of building going on, a lot of new loans were placed, the HOLC was in operation at the time? A. Oh, yes.

Q. Is that right? A. That's right.

Q. And by HOLC, the institution that took money took less of a risk because the mortgages are insured or guaranteed, is that so? A. I don't get that.

330 Q. The HOLC insures or guarantees the payment of these mortgages to the institutions, don't they? A. No, not HOLC. They held their own mortgages.

Q. FHA, is that right? A. Yes.

Q. So the institutions took less of a risk by placing those mortgages than they did before? A. Oh, but the majority of the mortgages were not placed with the FHA.

Q. And those that did, they assumed very little risk? A. That goes without saying, it's a government guarantee.

Q. That's right. So that would create a better market by reason of that FHA? A. Oh, I don't think there is any question but that FHA helped.

Q. You say in 1937 there was plenty of building, plenty of mortgage money available, and a lot of activity, is that right? A. That is correct.

Q. But if true that year the foreclosures in dollars and cents exceeded the moneys placed out on mortgages, would you still say that it was a healthy condition? A. Well, I certainly would not say that it was an unhealthy condition. I tried to explain to you my opinion, that we had not been able to reach the peak, and the institutions had not cleared up their portfolios on the properties, that they could probably have foreclosed years before. I know that the institutions withheld foreclosures for a long time on many properties. But as we got new building, the institutions were then able to put their money out. The mere fact that foreclosures were higher than the loans I do not think reflects the true picture one way or the other, good or bad.

Q. In 1937 the moratorium law was in effect? A. Indeed it was.

Q. A period of approximately four years? A. That's right.

Q. And certain mortgages made prior to 1932 or 1933 could not be foreclosed? A. That's right.

Q. There had to be new mortgages placed subsequent to the passage of the moratorium law in order to foreclose them? A. There were some moratorium mortgages paid off.

Q. I did not ask you about paying off. I said foreclosures. A. Oh, excuse me.

Mr. McGrath: I think this is very misleading.

The Court: Of course if there was default in the taxes they were foreclosable.

Mr. McGrath: That is right.

Mr. Collier: That is true, I will amend it.

335 Mr. McGrath: Now, if your Honor pleases, I have been endeavoring to reach the Assistant Commissioner of the Department of Housing and Buildings of the City of New York, Joseph Platzker, for the purpose of having him authenticate certain figures which appear in a brief submitted by the Mayor of the City of New York to the Office of Price Administration in opposition to the request of property owners in the City of New York for a general 10 percent rise in rents over the ceiling of March 1, 1943, which has been fixed for this area. It would not be necessary to call Mr. Platzker if these figures could be received in evidence taken from this brief as a proper source. Now I realize that there may be some merit to any objection which could be made to that offer by my adversary; but in the absence of a consent to the taking of the figures out of this brief I am afraid I shall have to ask for an opportunity to call Mr. Platzker at a time when I can get him. Now I cannot subpoena him as a public official without an order of the Court, but if I had been able to reach him, or Mr. Heinlein my associate here had been able to reach him yesterday afternoon or this morning, we believe he would have come over voluntarily, but we have not been able to do it. Now, aside from that testimony and the figures which will be introduced through it I can finish this case in probably another half hour, which will consist chiefly of talking by myself. That is all we have left. With your Honor's permission

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I would like to get some expression from Mr. Collier as to how he feels about this.

Mr. Collier: I would like to help the situation along.

The Court: Suppose you finish up everything else and then we will adjourn until tomorrow morning, and perhaps you will not need Mr. Platzker at all.

Mr. McGrath: I want to ask your Honor to take judicial notice of certain matters to which I will now refer very briefly, and which matters will be embodied in proposed findings which we shall submit following the termination of the case, thereby obviating the necessity of introducing this lengthy matter into the record.

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The first matter is the President's message to Congress on inflation.

The Court: These are matters that I understand you wish the Court to take judicial notice of.

Mr. McGrath: Yes, sir. And I take it that under the authorities in our brief your Honor has the right to take judicial notice of a Presidential message to Congress. This is House document No. 834, and I should like to read the points to which the President directed the Congress' attention at that time. He states:

"I reiterate the seven point program which I presented April 27, 1942: (1) To keep the cost of living from spiralling upward we must tax heavily, and in that process keep personal and corporate profits at a reasonable rate. The word 'reasonable' being defined at a low level. (2) To keep the cost of living from spiralling upward we must fix ceilings on the prices which consumers, retailers, wholesalers and manufacturers pay for

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the things they buy, and ceilings on rents for dwellings in all areas affected by war industries.

(3) To keep the cost of living from spiralling upward we must stabilize the remuneration received by individuals for their work. (4) To

keep the cost of living from spiralling upward we must stabilize the prices received by growers for the products of their lands. (5) To keep the

cost of living from spiralling upward we must encourage all citizens to contribute to the cost of winning this war by purchasing war bonds

with their earnings instead of using those earnings to buy articles which are not essential.

(6) To keep the cost of living from spiralling upward we must ration all essential commodities of which there is a scarcity so that they may be distributed fairly among consumers and not merely

in accordance with financial ability to pay high prices for them: (7)" (And this is the one upon which we particularly rely) "To keep the cost of

living from spiralling upward we must discourage credit and instalment buying and encourage the paying off of debts, mortgages and other obligations, for this promotes savings, retards excessive

buying, and adds to the amount available to the creditors for the purchase of war bonds."

Further on in that message the President made the following statement, which I quote:

"Annual wage and salary disbursements have increased from 43.7 billion dollars in 1939 to an estimated \$75,000,000,000 in 1942. This represents an increase of 71 per cent. To obtain the full appreciation of what that increase means we should remember that \$75,000,000,000 is more than our total national income was during any single year in the nineteen thirties. Due to the con-



stantly increasing employment overtime the wage rate increases, the annual wage and salary bill for the entire country has been rising by more than \$1,000,000,000 a month."

I also ask the Court to take judicial notice of the Executive Order of the President, No. 8,734, establishing the Office of Price Administration and Civilian Supply in the Executive Office of the President, and defining its functions and duties. I should simply like to read the first part of that order:

"By virtue of the authority vested in me by the constitution and the statutes, and in order to define further the functions and duties of the office of emergency management with respect to the national emergency as declared by the President on September 8, 1939, for the purpose of avoiding profiteering and unwarranted price rises, and of facilitating an adequate supply and the equitable distribution of materials and commodities for civilian use, and finding that the stabilization of prices is in the interest of national defense, and that this order is necessary to increase the efficiency of the defense program, it is hereby ordered—"

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Then further, creating the Office of Price Administration and Civilian Supply, the head of which shall be an administrator appointed by the President, the order directs that the administrator shall:

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"(a) Take all lawful steps necessary or appropriate in order (1) to prevent price spiralling, rising cost of living, profiteering and inflation resulting from market conditions caused by the diversion of large segments of the nation's re-

sources to the defense program by interruptions to the normal sources of supply or by other influences growing out of the emergency.

“(2) To prevent speculative accumulation, withholding and hoarding of materials and commodities.

347 “(3) To stimulate provision of the necessary supply of materials and commodities required for civilian use in such manner as not to conflict with the requirements of the War, Navy and other Departments and Agencies of the Government and of foreign governments for materials, articles and equipment needed for defense (such requirements are hereinafter referred to as ‘military defense needs’). And

“(4) After the satisfaction of military defense needs, to provide through the determination of policies and the formulation of plans and programs for the equitable distribution of the residuary supply of such materials and commodities among competing civilian demands.”

348 Just in passing we might observe that the emergency which is referred to in these documents from which I read is quite a different emergency than the one which is referred to in the legislation originally enacted in 1933.

I ask your Honor to take judicial notice of the report of the House Committee on Banking and Currency, No. 1409, November 7, 1941, which deals with the Emergency Price Control Act of 1942. And I quote the following paragraph from that report:

“In view of the sharp increase in purchasing power resulting from defense expenditures, combined with increasing acute shortages of certain

essential materials, legislation to deal with the inflationary tendencies caused by this condition is essential for the protection of the national defense and security. Unless such legislation is enacted, inflationary increases in prices are inevitable, and if not prevented will lead to future deflation and depression, with all the human misery and economic chaos resulting therefrom, will retard the defense program, and will aggravate the dangers and difficulties of a return to a normal peacetime basis."

I ask your Honor to take judicial notice of the Home Owners Loan Corporation Act of 1933 and of the activities of the Home Owners Loan Corporation pursuant to that Act. And I respectfully refer your Honor to the United States Government Manual for the winter of 1943-44 for a summary of the activities and the reasonable current position of the Home Owners Loan Corporation. I would like to read the following from that Manual:

"Home Owners Loan Corporation. Creating and Purpose. The Home Owners Loan Corporation was established by the Home Owners Loan Act of 1933, as amended. Its purpose was to grant long term mortgage loans at low interest rates to distressed home owners who were unable to procure financing through normal channels, and to help stabilize real estate and mortgage values—then almost non-existent because of the depression. As provided by the Act, the corporation ceased its lending activities in 1936. Since then it has been engaged in liquidating its loans and other assets.

"Organization. Collections of its loans and rental and sale of the corporations' acquired

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properties are carried on through eight regional offices under the corporation's home office in New York."

I am skipping a portion and coming down to the paragraph "Liquidation of Assets."

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"Liquidation of Assets. Since 1936 the corporation's chief task has been to aid its borrowers in meeting their payments and keeping their homes and to liquidate its loans and properties. On June 30, 1943, it was collecting on nearly 737,000 accounts, 597,000 those of original borrowers and the rest purchasers of foreclosed property, about 243,000 borrowers and purchasers of HOLC houses had paid off their accounts in full. More than 110,000 borrowers were making monthly payments in amounts greater than called for by their contracts. Of the 195,600 properties which the corporation had taken over, 171,000 or 87 per cent had been sold."

"Up to June 30, 1943, total loans, subsequent advances, and other investments of the corporation in its loans, sales, contracts and properties, reached a cumulative total of \$3,484,000,000. On the same day \$1,852,000,000, or 53.1 per cent of this amount, had been liquidated."

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The Court: Is there any segregation of the figures as they apply to New York State?

Mr. McGrath: No, sir. I do not have any such segregation. It is an interesting thing to observe, though, that of all the Home Owners Loan activities they have succeeded in liquidating out 53.1 per cent. I have here a report of the Home Owners Loan Corporation which was made by John H. Fahey, Federal Home Loan Bank Commissioner, to Congress on January 31, 1944,

which contains some extremely illuminating information on the activities of the Home Owners Loan Corporation. This is in the main an argument urging Congress not to precipitately liquidate the Home Owners Loan Corporation but to let it liquidate in an orderly manner over a period of years, thereby realizing very much more than they could if they embarked on a course of immediate sacrificing of its assets. There are attached to this report various exhibits.

I would like to ask your Honor to take judicial notice of this report of the Home Owners Loan Corporation which was made by the Commissioner of the Federal Home Loan Bank Administration to the 78th Congress, Second Session, House Document No. 448, and for the convenience of the Court I would be glad to leave it with you at this time.

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I also wish to direct your Honor's attention to the organization of the Federal Housing Administration, which is dealt with in the United States Government Manual for the winter of 1943-44. I would simply like to read a short portion of the chapter dealing with the Federal Housing Administration:

"Creation and Authority. In accordance with Executive Order 9070 of February 24, 1942, the Federal Housing Administration under the National Housing Agency exercises functions formerly vested in the Federal Housing Administration under the Federal Loan Agency. Its function continues to be that of insuring private lending institutions against loss on mortgage loans secured by one to four-family dwellings or by large-scale rental housing projects, and on loans for property repair or improvement. The Federal

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Housing Administration was created by the National Housing Act, approved June 27, 1934.

"Purposes. The National Housing Act as amended authorizes the Federal Housing Commissioner to insure lending institutions against losses incurred on two general types of loans, those for the repair, alteration or improvement of real property, which may or may not be secured by collateral security, and those secured by mortgages on structures designed primarily for residential use."

359 In our findings we may request the Court to find in greater detail the nature and extent of the activities of the Federal Housing Administration. I do not think it is necessary to embody that in the record at the present time.

In addition to those already mentioned, we expect to ask the Court to take judicial notice of the various governmental documents, proclamations, enactments, resolutions, and directives which naturally fall into two groups. Group 1 would be those dealing with the depression and the original so-called emergency, and among these we list the Presidential proclamation declaring a banking holiday and the proclamation of Governor Lehman following that of the President, the creation of the Home Owners Loan Corporation to which reference has already been made, the 360 preamble of the original moratorium law, the creation of the WPA, NRA, CCC, the National Housing Act, and the Federal Deposit Insurance Corporation.

The other group naturally relating to the issue of the termination of the so-called emergency and the advent of entirely new conditions would embrace the judicial notice by the Court of the fol-



lowing matters, among others: Declaration of War in Europe September 1, 1939; Declaration of War on the United States December 8, 1941; War Man Power Commission; the creation and the order freezing wages, the creation of the office of Economic Stabilization, the creation of the Office of Price Administration with its branch or subdivision embracing emergency rent control; the figures of the Labor Department on employment and payrolls, the various President's messages to Congress and to the people with relation to holding the line against inflation, the discontinuance of WPA, the achievements of the Home Owners Loan Corporation, and the Federal Housing Administration.

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We also ask the Court to take judicial notice of the state of the law in other states with regard to moratorium. And I might say for the Court's convenience on that that I have telegrams from all the states that did have a moratorium in effect within the last year or two, from either the Governor or the Secretary of State, saying we no longer have a moratorium. I can make those available if there is any question in your Honor's mind about it. I do know as an absolute fact that there is no more moratorium in any other state except New York at the present time.

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That, with the exception of the data contained in the Mayor's brief and the calling of Mr. Platzker, will be the plaintiff's case.

The Court: You have not been able to determine yet whether you want to ask Mr. Platzker anything on cross-examination?

Mr. Collier: I have not gone through this, although I think we can dispense with that. We

will let that go for what your Honor thinks it is worth.. Your Honor will take judicial notice of various things to give this just the same weight as everything else.

The Court: All right.

Mr. McGrath: If that is the case then I want to read into the record from that brief the various matters.

The Court: Are you having it marked as an exhibit?

365 Mr. McGrath: I am about to indicate to you my problem in that regard. I have a brief here which was loaned to me by the attorneys in New York who are opposed to the Mayor of the City of New York in seeking a general 10 per cent rise in rents above the fixed ceiling. I am obliged to return this brief. I am informed by the Mayor's office, by the office of Mr. Platzker in the Department of Housing and Buildings that they do not have another copy of this brief available over there, and therefore ask your Honor's permission to offer now the various sets of figures, identifying them by the page number of this brief, and then I would like the opportunity to photostat those figures which are received in evidence as so identified and furnish a copy to the Court and furnish a copy to my adversary, marking the photostats with the exhibit numbers that the Court will indicate. If that is agreeable.

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The Court: Suppose we consider this as marked Plaintiff's Exhibit 12.

Mr. McGrath: There are various portions of it that I want marked. I cannot mark the whole brief.

I offer now the vacancy survey of competitive apartments in Manhattan, which appears on page

9 of the Mayor's supplemental memorandum to the Office of Price Administration in the 315 West 97th Street Realty Co. case, which vacancy survey embraces three classes of properties, apartment houses nine stories and over, six-story elevator apartments, and walk-up apartments.

I offer also the survey of vacancies in old-law tenements made by housing inspectors of the Department of Housing and Buildings of the City of New York as of April 1, 1944, which appears on page 12 of said brief.

The Court: The first one that you offered then I suppose, when the photostat is presented, will be deemed to be marked Plaintiff's Exhibit 12, and the second one Plaintiff's Exhibit 13.

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(Received and considered as having been marked Plaintiff's Exhibits 12 and 13.)

Mr. McGrath: I offer in evidence the table appearing at page 37 of the said brief showing the real estate tax levies in New York City for the years 1924 to 1943 inclusive, and showing the percentage of taxes uncollected at the end of each year, the source of these figures being the Department of Finance of the City of New York.

(Received and considered as having been marked Plaintiff's Exhibit 14.)

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Mr. McGrath: I offer in evidence vacancy survey of competitive apartments in Manhattan, not including old-law tenements, from 1924 to 1944, which appears at page 24 of the said brief.

(Received and considered as having been marked Plaintiff's Exhibit 15.)

Mr. McGrath: I offer in evidence the listing of one hundred instances of Manhattan foreclosures during 1943, where amounts due on mortgages exceed the assessed value. These figures appear on pages 28 and 29 of the said brief.

(Received and considered as having been marked Plaintiff's Exhibit 16.)

371 Mr. McGrath: I offer in evidence the table of figures showing one hundred instances of deeds on Manhattan property surrendered in lieu of foreclosure in 1943, where the amount due on mortgages exceeds the assessed value. This table appears at pages 30 and 31 of the said brief.

(Received and considered as having been marked Plaintiff's Exhibit 17.)

Mr. McGrath: I offer in evidence the table appearing at page 36 of the brief, which shows the basic real estate tax rate for the City of New York for the years beginning 1939-40 down to the probable figure for the year 1944-45, which figures come from the Chief Assessor's Office of the Tax Department of the City.

372 (Received and considered as having been marked Plaintiff's Exhibit 18.)

Mr. McGrath: I offer in evidence Appendix L at page 39 of the said brief, which deals with forty-seven mortgages refinanced in 1943 at 7 per cent increase in principal.

(Received and considered as having been marked Plaintiff's Exhibit 19.)

Mr. McGrath: Plaintiff rests, your Honor.

Mr. Coller: The defendant moves to dismiss the complaint on the ground that the plaintiff has failed to establish a cause of action.

The Court: I shall reserve decision on the motion.

Mr. Coller: The defendant rests, and renews the motion.

The Court: I reserve decision on the motion. Do you wish to submit any brief?

Mr. Coller: Yes, sir.

The Court: Submit by June 6th.

CASE CLOSED.

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### **Plaintiff's Exhibit 1.**

(Documentary Stamps)

KNOW ALL MEN BY THESE PRESENTS, THAT CHRISTIAN M. ANDERSON and BERTHA ANDERSON, his wife, residing in the Borough of Brooklyn, City and State of New York, hereinafter designated as the obligors do hereby acknowledge themselves to be justly indebted to

THE EAST NEW YORK SAVINGS BANK

a domestic banking corporation of Brooklyn, New York, hereinafter designated as the obligee, in the sum of FIVE THOUSAND (\$5,000.) Dollars, lawful money of the United States, which sum said obligors do hereby jointly and severally covenant to pay the said obligee, its successors or assigns on the first day of April, nineteen hundred twenty-four together with interest thereon to be com-

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*Plaintiff's Exhibit 1.*

puted from the day of the date hereof at the rate of five and one-half per centum per annum and to be paid semi-annually on the first days of April and October in each year to the treasurer of said bank at its banking rooms during its business hours until said principal sum shall be fully paid.

377 IT IS HEREBY EXPRESSLY AGREED, that the said principal sum shall become due at the option of the said obligee, successors or assigns, after default in the payment of interest for twenty days, or after default in the payment of any taxes, assessments or water rates for thirty days after the same becomes due and payable, or after default in the payment of any instalment of principal, or after any other default, or upon the happening of any event by which, in any case, under the terms of the mortgage securing this bond, the said principal sum may or shall become due and payable; also that all of the covenants and agreements made by the said obligor in said mortgage are hereby made part of this instrument.

Signed and sealed this 19th day of July, nineteen hundred and twenty-one.

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CHRISTIAN M. ANDERSEN [L. S.]  
BERTHA ANDERSEN [L. S.]

IN THE PRESENCE OF

G. FRED MIDDENDORF, JR.



STATE AND CITY OF NEW YORK }  
COUNTY OF KINGS } ss.:

On this 19th day of July, nineteen hundred and twenty-one, before me came CHRISTIAN M. ANDERSON and BERTHA ANDERSON, his wife, to me known to be the individuals described in, and who executed the within instrument, and severally acknowledged that they executed the same.

A. C. FARRELL

Notary Public, Kings County No. 164

Certificate filed in Queens County No. 2191

Kings County Register's No. 2185

Commission Expires March 30, 1922

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No. 2540

App. No. 1519

CHRISTIAN M. ANDERSON

and

BERTHA ANDERSON,

his wife,

Address #2611 Atlantic Avenue,  
Brooklyn, N. Y.

TO

THE EAST NEW YORK SAVINGS BANK

BOND

381

Amount, \$5,000.

Interest rate,  $5\frac{1}{2}\%$ .

Dated, July 19th, 1921.

Principal due, April 1st, 1924.

Interest payable, Apr. & Oct. 1st.

THE EAST NEW YORK SAVINGS BANK

Pennsylvania and Atlantic Aves.

Brooklyn-New York

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**Plaintiff's Exhibit 2.**

THIS MORTGAGE made the 19th day of July, nineteen hundred twenty-one between CHRISTIAN M. ANDERSEN and BERTHA ANDERSEN, his wife, residing at #2611 Atlantic Avenue, Borough of Brooklyn, City and State of New York, the mortgagors, and

**THE EAST NEW YORK SAVINGS BANK**

a domestic banking corporation of No. 2644 Atlantic Avenue, Brooklyn, New York, the mortgagee,

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WITNESSETH, that to secure the payment of an indebtedness in the sum of FIVE THOUSAND (\$5,000.) dollars, lawful money of the United States, to be paid on the first day of April, nineteen hundred twenty-four together with interest thereon to be computed from the day of the date hereof at the rate of five and one-half per centum per annum and to be paid semi-annually on the first days of April and October in each year to the treasurer of said bank at its banking rooms during its business hours until said principal sum shall be fully paid according to a certain bond or obligation bearing even date herewith, the mortgagor hereby mortgages to the mortgagee ALL

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that certain lot, piece or parcel of land with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of Atlantic Avenue distant twenty-five (25) feet two and one-half ( $21\frac{1}{2}$ ) inches westerly from the cor-

ner formed by the intersection of the northerly side of Atlantic Avenue with the westerly side of Sheffield Avenue; thence westerly along the northerly side of Atlantic Avenue twenty-five (25) feet more or less to a point opposite the center of a party wall standing partly on premises herein described and partly on premises next adjoining on the west; thence northerly parallel with Sheffield Avenue part of the distance through the center of a party wall one hundred fourteen (114) feet five (5) inches more or less to the southerly side of lot 23, block 22 on a map of East New York Lands belonging to John R. Pitkin, The East New York Land Company and others, and filed in the Kings County Register's Office; thence easterly along the southerly side of lot 23 as laid down on said map twenty-five (25) feet more or less to a point on a line drawn parallel with Sheffield Avenue from the point of beginning; thence southerly parallel with Sheffield Avenue part of the distance through a party wall one hundred seventeen (117) feet eight (8) inches more or less to the point or place of BEGINNING.

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TOGETHER with all the right, title and interest of the mortgagors, of, in and to the land lying in said Atlantic Avenue in front of and adjoining the above described premises to the center line of said avenue.

387

Being the same premises this day conveyed to the mortgagors by Erwin F. Gross as executor under the Last Will and Testament of Anna Phister, deceased, Richard Phister, and by Jacob Zahner as special guardian pursuant to an order of Supreme Court Kings County entered July

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*Plaintiff's Exhibit 2.*

11th, 1921, and Jacob Zahner, individually, by deed bearing dates July 11, 1921 and July 19/1921 respectively, delivered and intended to be recorded simultaneously herewith, this mortgage being given to secure the payment of the sum of Five Thousand (\$5,000.) Dollars advanced by the mortgagee to the mortgagors, and which sum was used by the mortgagors in payment of part of the purchase price or consideration for said conveyance.

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TOGETHER with all fixtures and articles of personal property now or hereafter attached to, or used in connection with, the premises, all of which are represented to be owned by the mortgagor and are covered by this mortgage.

And the mortgagor covenants with the mortgagee as follows:

1. That the mortgagor will pay the indebtedness as hereinbefore provided.

2. That the mortgagor will keep the buildings on the said premises insured against loss by fire for the benefit of the mortgagee.

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3. That no building on the premises shall be removed or demolished without the consent of the mortgagee.

4. That the whole of said principal sum shall become due after default in the payment of any installment of principal or of interest for twenty days, or after default in the payment of any tax, water rate or assessment for thirty days, after the same becomes due and payable.

5. That the holder of this mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver.

6. That the mortgagor will pay all taxes, assessments or water rates, and in default thereof, the mortgagee may pay the same.

7. That the mortgagor within six days upon request in person or within thirty days upon request by mail will furnish a statement of the amount due on this mortgage.

8. That notice and demand or request may be made in writing and may be served in person or by mail.

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9. That the mortgagor warrants the title to the premises.

10. That in case of a sale, said premises, or so much thereof as may be affected by this mortgage, may be sold in one parcel.

11. That the whole of the principal sum shall become due at the option of the mortgagee after default for thirty days after notice and demand in the payment of any installment of any assessment for local improvements heretofore or hereafter laid which is or may become payable in annual installments, and which has affected, now affects or hereafter may effect the said premises, notwithstanding that such installments be not due and payable at the time of such notice and demand; and also that the whole of said principal sum shall immediately become due at the option

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of the mortgagee upon any default in keeping the buildings on the premises insured against loss by fire as required by paragraph numbered "2" above, or immediately upon the actual or threatened demolition or removal of any building erected or to be erected upon said premises, or if after application by any holder of this mortgage to two or more fire insurance companies lawfully doing business in the State of New York and issuing policies of fire insurance upon buildings situate in the place where the mortgaged premises are situate, the companies to which such application has been made shall refuse to issue such policies.

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12. That the whole of said principal sum shall become due at the option of the mortgagee, if the buildings on said premises are not maintained in reasonably good repair or upon the failure of any owner of said premises to comply with the requirement of any department of the State or City of New York, within three months after an order making such requirement has been issued by any said State or City Department.

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13. In the event of the passage after the date of this mortgage of any law of the State of New York, deducting from the value of land for the purposes of taxation any lien thereon, or changing in any way the laws for the taxation of mortgages or debts secured by mortgage for State or local purposes, or the manner of the collection of any such taxes, so as to affect this mortgage, the holder of this mortgage and of the debt which it secures, shall have the right to give thirty days' written notice to the owner of the land requiring the payment of the mortgage debt. If such notice



*Plaintiff's Exhibit 2.*

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be given, the said debt shall become due, payable and collectible at the expiration of said thirty days.

14. That the holder of this mortgage in any action to foreclose it, shall be entitled (without notice and without regard to the adequacy of any security for the debt) to the appointment of a receiver of the rents and profits of said premises; and in the event of any default in paying said principal or interest, such rents and profits are hereby assigned to the holder of this mortgage as further security for the payment of said indebtedness.

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IN WITNESS WHEREOF, this mortgage has been duly executed by the mortgagor.

CHRISTIAN M. ANDERSEN [L. S.]  
BERTHA ANDERSEN [L. S.]

IN THE PRESENCE OF  
G. FRED MIDDENDORF, JR.

STATE AND CITY OF NEW YORK }  
COUNTY OF KINGS } ss.:

On this 19th day of July, 1921, before me came CHRISTIAN M. ANDERSEN and BERTHA ANDERSEN, his wife, to me known and known to me to be the individuals described in, and who executed the foregoing instrument, and severally acknowledged to me that they executed the same.

399

A. C. FARRELL  
Notary Public, Kings County No. 164  
Certificate filed in Queens County No. 2191  
Kings County Register's No. 2185  
Commission Expires March 30, 1922

400

*Plaintiff's Exhibit 2.*

Record ✓

Jul 21 1921 10 48 AM

No. 2540

App. No. 1519

59172

CHRISTIAN M. ANDERSEN

and

BERTHA ANDERSEN,

his wife,

TO

THE EAST NEW YORK SAVINGS BANK

401

Record at same time as both deeds

MORTGAGE

Dated July 19th, 1921.

Amount \$5,000. Rate 5½%

Principal Due April 1st, 1924.

Interest Payable Apr. &amp; Oct. 1st.

The land affected by the within instrument lies  
in Section 12 in Block 3668 on the Land Map of  
the County of Kings.

Record and Return to

THE EAST NEW YORK SAVINGS BANK

Pennsylvania and Atlantic Aves.

402

Brooklyn-New York

RESERVE THIS SPACE FOR USE OF  
RECORDING OFFICE

Q 2555

Kings County Register's Office

Received as Recording Tax on  
the Within Instrument \$25.00

Jul 21 1921

EDWARD H. MADDOX

M.

Register Kings County

*Plaintiff's Exhibit 3.*

403

Recorded in Register's Office, Kings County, in  
Liber 4971 Page 31 Block 3668 of Mortgages at  
48 minutes Past 10 AM.

Jul 21 1921

Witness my hand and official seal.

EDWARD H. MADDOX,

Register

JOHN FEITNER,

Deputy Register

25.00—4.00

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**Plaintiff's Exhibit 3.**

(Reprinted from New York Times of May 22,  
1944, page 21.)

# **CITY SETS A RECORD IN TAX COLLECTIONS**

91.1% of Current Levy Had Been Paid In on  
April 30, the Mayor Announces

## **SEES PROPERTY VALUES UP**

405

Views Outlook for After War as 'Simply Great'—  
Names D-Day Prayer Committee

The city has just broken all records for real  
estate tax collections, with 91.1 per cent of the  
current levy paid into its treasury by April 30,

Mayor La Guardia declared yesterday in his weekly radio broadcast from City Hall.

Authority for the Mayor's statement was a memorandum report sent by City Collector William Reid to City Treasurer Almerindo Portfolio. The report predicted that 94 or 95 per cent of the current levy of \$489,499,802 would be collected by June 30.

407 The faster tempo of collections, Mr. Reid reported, was not confined to real estate taxes, but also applied to other city imposts, such as water rents and sales taxes. He ascribed the inrush of tax moneys to improved employment conditions and "tremendous increases" in business.

"Continued improvements in employment, with a consequent demand for bigger and better apartments, increases in earnings of families as well as in the number of those in the family working, and tremendous increases in business have all had their effect in improving tax conditions," the report said.

408 According to the report, \$445,954,477 of the current levy was paid up by April 30, as compared with \$432,846,560, or 89.44 per cent of the 1942-43 levy, paid in the comparable period last year. The current levy is \$5,559,486 more than last year's, but collections this year have exceeded those of last year by \$13,107,917.

Mr. Reid's report showed that 94.79 per cent of the first half of the levy was paid by April 30, as compared with 93.78 per cent in the same period last year. The percentage collected this year on account of the second half of the levy is 87.41, against 85.1 a year ago.

## COLLECTIONS BY BOROUGH

Borough collections, the report declared, have also broken all previous records. In Manhattan the collections on account of both halves amounted to 94.8 per cent of the levy, compared with 93.34 per cent last year. In the other boroughs the comparative collections were as follows: Bronx, 89.78 per cent, against 88.41 last year; Brooklyn, 88.27 per cent, against 86.36; Queens, 87.03 per cent, against 84.83; Richmond, 76.53 per cent, against 74.47. The largest increase was that in Queens, 2.2 per cent.

The increased tax collections, the Mayor declared in his broadcast, gave further proof that property values in New York were rising. The outlook for the post-war period, he said, was "simply great", despite gloomy predictions by a handful of pessimists.

In April, he noted, the city gained twenty-four new business concerns and only one moved away. As for real estate values, the Mayor declared, sixty-three parcels of property in the Bedford-Stuyvesant section of Brooklyn, assessed at \$322,000, had been valued by the courts at \$425,000 in condemnation proceedings involving a city school and playground project. The owners, the Mayor said, had asked for a total of \$587,000.

The Mayor announced the appointment of a committee consisting of Grover A. Whalen, director of the CDVO; former Magistrate Edward C. Maguire; James S. Quinn, representing the American Federation of Labor, and Saul Mills, representing the Congress of Industrial Organizations, to aid him in conducting informal prayer services throughout the city when D-day comes. A feature

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*Plaintiff's Exhibit 3.*

of these exercises, the Mayor said, would be an open-air prayer service the day after D-day on the east side of Madison Square Park.

The Mayor suggested that employees in shops and stores halt routine activities for a moment of prayer if news of the invasion comes during working hours. If it comes at night, he suggested that all citizens stop in at some church for a moment of prayer on their way to work or business. These prayers are all the more warranted, he said, because New York City alone has more men and women in the armed forces than any State except Pennsylvania.

413

Appealing to New Yorkers to spend their vacations working on up-State farms, the Mayor declared that city employees, who otherwise have been forbidden to do outside work, would be encouraged to perform this useful wartime labor during their vacations.

The Mayor's broadcast closed with an appeal to citizens to co-operate in the elimination of unnecessary noise this summer. All licensed places, he said, must co-operate in stopping all "raucous outbursts," including the singing of "Sweet Adeline."

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### Plaintiff's Exhibit 4.

#### GROUP FIVE MORTGAGE INFORMATION BUREAU

#### COMPARISON OF TOTAL ASSETS BROOKLYN SAVINGS BANKS

JANUARY 1, 1944 AND JANUARY 1, 1936

	January 1, 1944	January 1, 1936
Total assets	\$1,721,462,004	\$1,310,177,964
65% of total assets amount to	1,118,950,303	851,615,630
B/M account plus other real estate held	664,496,444	744,138,482
% of above to total assets	38.6%	56.8%
Funds available for in- vestment	454,453,859	107,477,148

416

#### ASSET COMPOSITION OF ALL GROUP FIVE SAVINGS BANKS AS OF JANUARY 1, 1944

	January 1, 1944
Total assets	\$2,038,264,000
First mortgages	770,162,020
Other real estate held	12,678,359
Total of first mortgage and other real estate held	782,840,388
% of above to total assets	38.4%
65% of total assets	1,324,871,615
Balance available for investment	542,031,257

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## Plaintiff's Exhibit 5.

TOTAL REAL ESTATE HELD BY  
GROUP V MORTGAGE INFORMATION BUREAU MEMBERS  
AS OF JANUARY 1, 1944

	One-Family		Two-Family		3/s-Family		Apartments		Stores & Apts.		Bus. Prop. & Spec.		Vacant Land		Totals	
	No.	Mortgage	No.	Mortgage	No.	Mortgage	No.	Mortgage	No.	Mortgage	No.	Mortgage	No.	Mortgage	No.	Mortgage
Brooklyn	120	\$ 668,107	147	\$ 750,189	218	\$1,347,952	32	\$ 949,879	640	\$5,660,956	107	\$6,659,167	110	\$1,069,430	1,374	\$17,105,680
Queens	119	\$ 742,388	35	\$ 198,063	9	\$ 55,017	—	—	175	\$1,445,526	50	\$ 846,053	41	\$ 563,684	429	\$ 3,857,742
Nassau	32	\$ 303,266	2	\$ 11,000	—	—	1	\$ 56,700	4	\$ 77,874	—	—	6	\$ 47,112	45	\$ 495,952

# Plaintiff's Exhibit 6.

## COMPARISON OF SALES, FORECLOSURES, AND NEW LOANS OF MEMBER BANKS FROM 1934 THROUGH 1943

### TOGETHER WITH COMPARISON OF O. R. E. STILL HELD FROM 1939 THROUGH 1943

O. R. E. Held		Foreclosures		Sales		New Loans	
No.	Amount	No.	Amount	No.	Amount*	No.	Amount
BROOKLYN							
1934		499	\$ 6,372,518	113	\$ 1,674,310	150	\$ 931,800
1935		2,027	20,709,545	592	7,019,870	775	4,923,910
1936		2,107	18,756,877	936	12,696,380	845	7,573,175
1937		1,341	13,508,722	1,179	12,843,814	1,089	12,702,470
1938	4,796	1,013	9,776,764	1,417	14,374,186	1,418	11,152,305
1939	4,294	936	7,790,844	1,764	14,187,534	2,503	29,963,348
1940	3,716	1,002	7,753,028	1,607	13,048,615	2,076	28,456,370
1941	2,759	941	7,242,692	1,893	13,870,928	2,444	24,503,514
1942		809	6,896,055	1,321	9,683,067	882	8,521,438
1943	1,374	818*	7,282,513	1,433	10,160,331	916	16,189,752

\* Excluding 180 Clinton Street (\$630,500)

QUEENS							
1934		120	\$ 993,127	25	\$ 156,307	80	\$ 273,100
1935		748	5,317,127	126	1,005,585	413	1,751,840
1936		804	5,273,930	339	3,185,350	575	3,725,000
1937		423	2,338,700	517	4,220,485	1,166	9,328,163
1938	1,476	295	2,330,559	497	3,329,094	1,953	16,007,168
1939	1,274	241	1,706,706	469	2,868,520	5,564	41,613,839
1940	1,147	329	2,016,340	457	2,752,571	6,051	40,160,533
1941	874	334	2,319,177	615	3,449,233	6,616	46,195,807
1942		231	2,085,691	456	3,174,046	2,237	13,628,136
1943	429	266	1,894,720	500	3,028,580	970	9,316,325

NASSAU							
1938		84	\$ 573,739	44	\$ 279,555	813	\$ 4,932,440
1939	228	65	1,017,706	60	402,990	2,653	13,750,273
1940	242	81	594,013	79	731,639	4,072	21,299,424
1941	192	70	559,175	135	919,889	4,069	20,684,022
1942		42	318,335	109	654,255	2,482	11,729,750
1943	45	23	177,079	90	1,022,550	1,107	5,246,696

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**Plaintiff's Exhibit 7.****COMPARISON OF MORTGAGES IN ARREARS  
FOR MEMBER SAVINGS BANKS****OCTOBER, 1935, TO OCTOBER, 1943**

	Mortgages in Arrears		Mortgages Under
	Number	Dollar Amt.	Foreclosure or Assignment of Rents
October, 1935	19%	25%	5%
April, 1936	15%	22%	4%
October, 1936	11.7%	17.3%	3%
April, 1937	9.4%	13%	1.6%
October, 1937	8.4%	11%	1.5%
April, 1938	6.6%	8.8%	1.3%
October, 1938	6.3%	8.0%	1.1%
April, 1939	5.5%	7.1%	1.0%
October, 1939	5.6%	6.5%	1.0%
April, 1940	4.9%	6.2%	.9%
October, 1940	5.0%	5.7%	1%
April, 1941	4.3%	5.0%	.9%
October, 1941	3.8%	4.65%	.9%
April, 1942	2.9%	3.6%	.8%
October, 1942	3.0%	3.7%	.8%
April, 1943	2.7%	4.0%	.8%
October, 1943	2.2%	3.0%	.8%

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**Plaintiff's Exhibit 8.****GROUP FIVE MORTGAGE INFORMATION BUREAU****SIX-STORY APARTMENT HOUSES  
CONSTRUCTED SINCE 1934 IN BROOKLYN**

426

	Total Units	Vacancy	% Of Vacancy
October 1938	15,844	1,081	7%
1939	19,435	1,149	6%
1940	24,866	1,989	8%
1941	28,616	1,028	4%
1942	30,255	208	.69%
1943	30,255	20	.07%

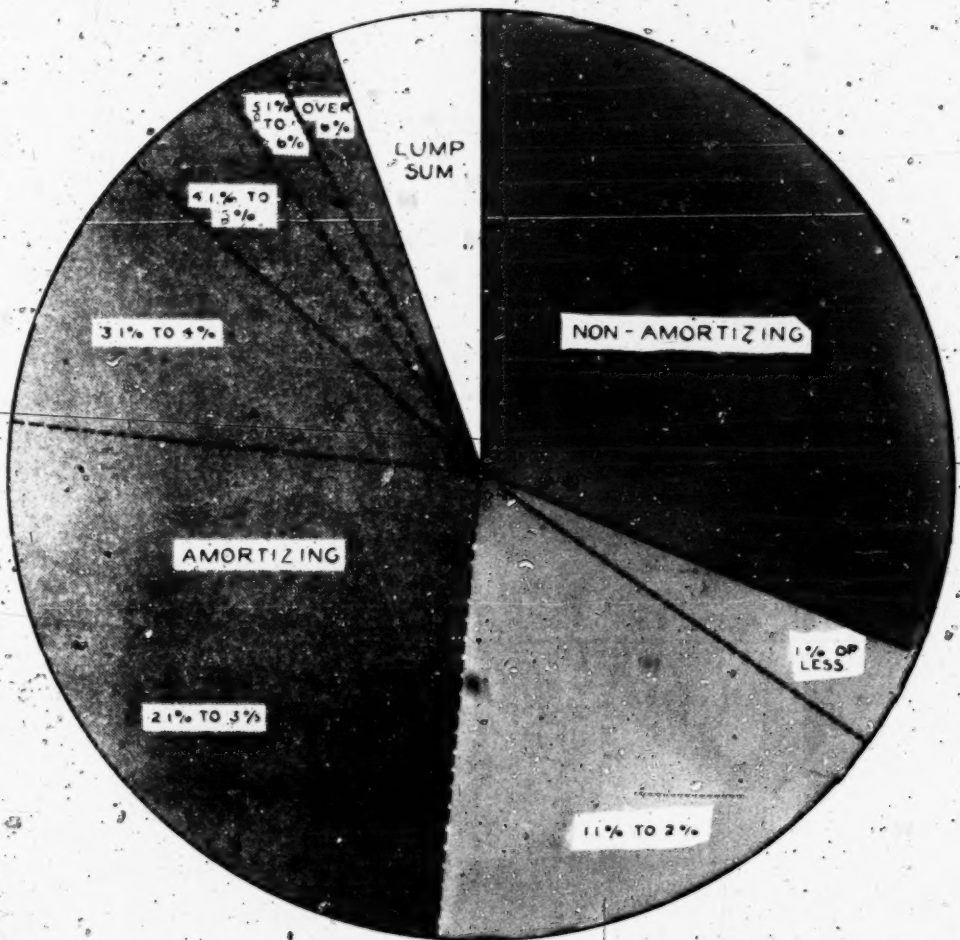
**Plaintiff's Exhibit 9.**

(Bound in opposite)

PLAINTIFF'S EXHIBIT 9.

CHART D

BROOKLYN MORTGAGES NOW HELD  
MADE PRIOR TO 1935





**Plaintiff's Exhibit 10.**

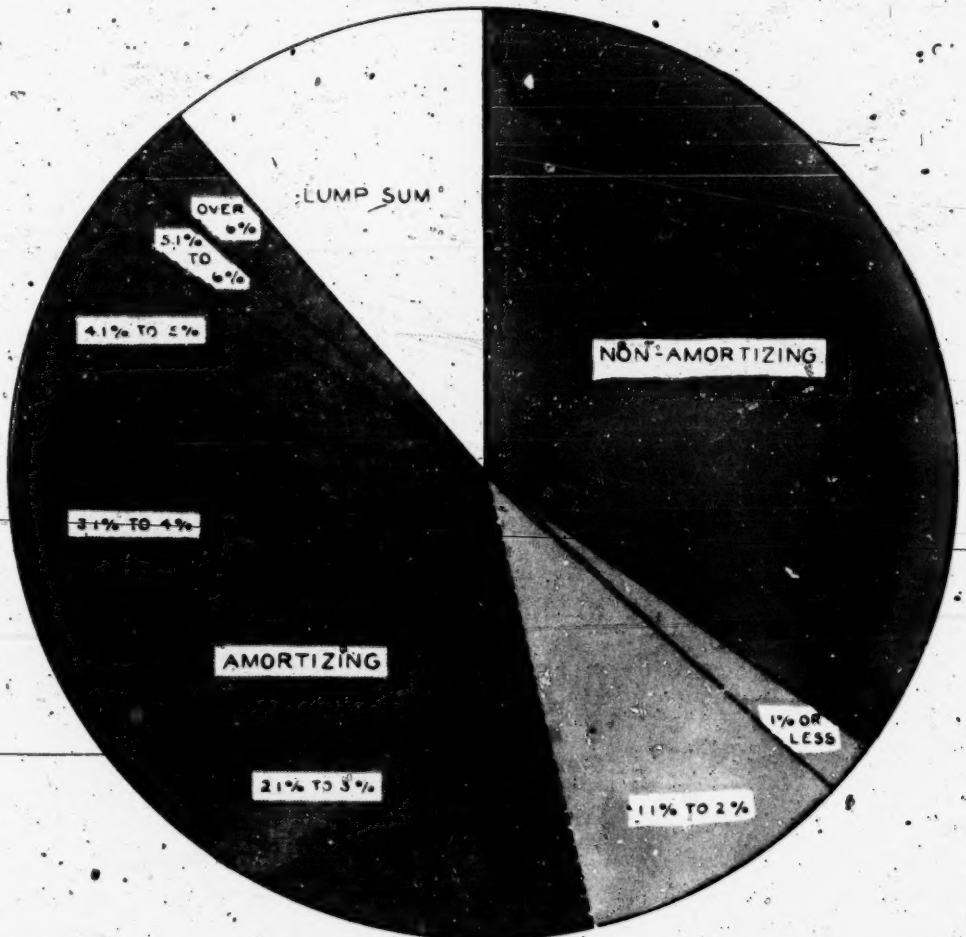
(Bound in opposite)



PLAINTIFF'S EXHIBIT 10.

CHART E

QUEENS MORTGAGES NOW HELD  
MADE PRIOR TO 1935





**Plaintiff's Exhibit 11.**

(Bound in opposite).

**SCHEDULE 3**

**SCHEDULE 2**

**TOTAL MORTGAGE PORTFOLIO**

**LOANS MADE PRIOR TO 1935**

**BROOKLYN AND QUEENS**

**APPRAISAL**

	50% or less		51% to 66-2/3%		67% to 80%		81% to 100%		Over 100%		TOTAL	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount
<b>BROOKLYN</b>												
Non-Amortizing	2,288	7,932,836	5,028	26,017,678	5,312	44,637,898	1,777	15,026,844	1,616	10,784,176	17,018	110,399,430
\$		2.25		7.45		12.75		4.35		4.85		31.85
Lump-Sum	1,524	4,437,620	1,129	5,519,020	936	6,269,820	147	894,680	135	1,194,757	3,871	18,315,906
\$		2.95		1.05		1.85		0.35		0.85		5.85
Amortizing	3,957	16,315,421	8,188	54,311,510	10,365	101,323,997	2,320	31,681,161	1,404	20,170,639	26,454	223,763,028
\$		4.05		15.45		28.35		9.05		5.75		63.55
(Total Int. & Amt. less than 7%)	(183)	(2,309,580)	(1,078)	(14,256,725)	(3,546)	(44,335,098)	(728)	(17,991,060)	(678)	(12,383,561)	(5,223)	(91,326,024)
\$		0.75		4.05		12.65		5.15		3.55		25.95
GRAND TOTAL	7,764	28,585,876	14,345	85,848,508	17,613	152,291,719	4,244	47,602,685	3,557	22,149,572	47,833	352,478,380
\$		8.15		24.45		43.25		13.55		10.85		100.05
<b>QUEENS</b>												
Non-Amortizing	1,735	5,316,149	6,069	25,806,318	4,229	22,485,224	575	4,418,105	233	1,678,492	12,841	57,704,288
\$		3.25		14.45		13.05		2.75		1.05		34.95
Lump-Sum	2,227	5,478,374	1,725	7,128,998	610	4,495,917	73	694,368	16	500,815	4,651	18,298,472
\$		3.35		4.25		2.75		0.45		0.35		11.15
Amortizing	3,286	10,776,120	7,308	32,914,640	5,185	39,992,182	395	2,609,067	154	2,142,609	16,328	89,435,018
\$		6.55		20.05		24.25		2.25		1.35		54.15
(Total Int. & Amt. less than 7%)	(69)	(560,618)	(326)	(4,091,400)	(668)	(14,426,368)	(72)	(1,318,640)	(36)	(1,325,370)	(1,221)	(22,322,396)
\$		0.35		2.85		8.75		1.15		0.85		13.45
GRAND TOTAL	7,248	21,570,643	15,102	65,849,556	10,024	66,973,323	1,043	8,721,540	403	4,322,916	33,820	165,437,778
\$		13.05		28.05		40.55		5.25		2.65		100.05

PLAINTIFF'S EXHIBIT 11.

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**Plaintiff's Exhibit 12.****VACANCY SURVEY OF COMPETITIVE  
APARTMENTS IN MANHATTAN**(CONDUCTED BY THE MANAGEMENT DIVISION,  
N. Y. REAL ESTATE BOARD)**(1) APARTMENT HOUSES 9 STORIES AND OVER:**

Date of Survey	Apartments Surveyed	Apartments Vacant	% Vacant
October 1, 1941	60,943	6,748	11.1%
October 1, 1942	63,943	6,240	9.8%
February 15, 1943	64,105	3,927	6.1%
June 15, 1943	64,211	2,542	4.0%
October 1, 1943	64,204	1,404	2.2%
February 15, 1944	64,235	619	1.0%

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**(2) 6-STORY ELEVATOR APARTMENT HOUSES:**

Date of Survey	Apartments Surveyed	Apartments Vacant	% Vacant
October 1, 1941	12,969	1,149	8.9%
October 1, 1942	13,898	984	7.1%
February 15, 1943	13,897	617	4.4%
June 15, 1943	13,897	433	3.1%
October 1, 1943	13,897	240	1.7%
February 15, 1944	13,897	69	0.5%

**(3) WALK-UP APARTMENTS:**

Date of Survey	Apartments Surveyed	Apartments Vacant	% Vacant
October 1, 1941	7,855	595	7.6%
October 1, 1942	8,026	625	7.8%
February 15, 1943	8,026	454	5.7%
June 15, 1943	8,026	291	3.6%
October 1, 1943	8,026	191	2.4%
February 15, 1944	8,026	66	0.8%

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**Plaintiff's Exhibit 13.**

**SURVEY OF VACANCIES IN OLD-LAW TENEMENTS BY HOUSING INSPECTORS OF THE DEPARTMENT OF HOUSING & BUILDINGS, OF CITY OF N. Y.**

APRIL 1, 1944

	Bldgs. Surveyed	Apts. Surveyed	Apts. Found Vacant
Manhattan	3,532	39,728	3,012
Brooklyn	4,672	23,194	1,511
The Bronx	1,662	11,976	1,420
Totals	9,866	74,898	5,943 or 8%

446

The 74,898 apartments surveyed included a sampling of practically all of the old-law tenement areas in Manhattan, Brooklyn and the Bronx. The buildings containing these apartments number 9,866 and I would like to point out that about 5,000 of these 9,866 buildings are fully rented. In Manhattan, vacancies are found in only one-third of the 3,532 old-law tenements; two-thirds of these buildings are fully rented.

Many of the old-law tenements that have vacancies, have only one vacancy each. Of course, some of them have vacancies as high as 50% or more but they are usually cold-water flats and in many instances have been foreclosed. Some of these old-law tenements still have an inadequate number of water-closets and others even lack hot water supply. Here is a list of ten old-law tenements in the Borough of Manhattan with unusually high vacancies:

447

- (1) 248 East 7th Street: 12 vacancies out of 24 apartments; foreclosed by mortgagee, October 28, 1943.



*Plaintiff's Exhibit 13.*

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(2) 250 1/2 East 7th Street: 12 vacancies out of 24 apartments; foreclosed by mortgagee, October 28, 1943.

(3) 84 East 7th Street: 5 vacancies out of 8 apartments; foreclosed by mortgagee, October 28, 1943.

(4) 208 East 88th Street: 12 vacancies out of 18 apartments; foreclosed by mortgagee, November 22, 1943.

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(5) 310 East 109th Street: 10 vacancies out of 15 apartments; foreclosed by mortgagee, February 17, 1944.

(6) 332 East 109th Street: 8 vacancies out of 15 apartments; foreclosed by mortgagee, March 18, 1944.

(7) 1429 Amsterdam Avenue: 9 vacancies out of 18 apartments; foreclosed by mortgagee, November 4, 1943.

(8) 1453 Amsterdam Avenue: 11 vacancies out of 18 apartments; foreclosed by mortgagee, October 30, 1941.

(9) 1207 First Avenue: 11 vacancies out of 18 apartments; foreclosed by mortgagee, January 19, 1937.

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(10) 2070 First Avenue: 12 vacancies out of 20 apartments; foreclosed by mortgagee June 4, 1942.

The next group of buildings in the old-law tenement-class that the protestants probably know very little about are the vacant and abandoned structures that the Department of Housing and Buildings of the City of New York officially classi-

*Plaintiff's Exhibit 13.*

fied as "Unfit for human habitation." They are  
 tenements the Department ordered closed because  
 of the failure of their owners to remove serious  
 violations of the Multiple Dwellings Law. At the  
 close of 1936, when the enforcement of fire-  
 retarding and proper sanitary facilities for these  
 buildings started vigorously, there were in the  
 City of New York 2,027 closed and abandoned  
 old-law tenements with a total of 17,018 apart-  
 ments. By the end of 1937 the total jumped to  
 5,065 closed and abandoned old-law tenements  
 with a total of 44,510 apartments. That means  
 an increase of 3,038 closed and abandoned old-law  
 tenements with an additional 27,492 apartments.  
 The foreclosure record of these 3,038 old-law ten-  
 ements that were closed or abandoned during 1937  
 should make interesting but sad reading. Some  
 of them were foreclosed during 1937, others a  
 year or two previously and the remaining num-  
 ber were foreclosed after 1937. No wonder the  
 Federal and State governments found it proper  
 to co-operate with this City through its Housing  
 Authority in building public housing for thou-  
 sands of families of low income. As a result of  
 either demolishing or renovating some of the  
 5,065 old-law tenements that were closed or aban-  
 doned by December 31, 1937, there remained on  
 December 31, 1943 (see Appendix D, post, p. 27),  
 3,750 closed and abandoned old-law tenements  
 with a total of 28,677 apartments. These 28,677  
 apartments are "unfit for human habitation" and  
 probably will not again be re-occupied—except,  
 in some instances of desirable rehabilitation, after  
 the war. However, if the protestants are look-  
 ing for something to justify high vacancies in the  
 old-law tenement class they may be obliged to

*Plaintiff's Exhibit 13.*

include these 28,677 apartments that are "unfit for human habitation" but represent 6.2% of the total number of apartments classified as old-law tenements.

## APPENDIX D.

## VACANT OLD-LAW TENEMENTS "UNFIT FOR HUMAN HABITATION."\*

	Manhattan		Bronx		Brooklyn		Queens		Richmond		Total New York City	
	Bldgs.	Apts.	Bldgs.	Apts.	Bldgs.	Apts.	Bldgs.	Apts.	Bldgs.	Apts.	Bldgs.	Apts.
Dec. 31												
1936	1068	11921	101	734	831	4252	7	36	20	75	2027	17018
1937	2947	32420	176	1340	1868	10401	51	255	23	94	5065	44510
1938	3130	33144	160	1152	1641	9077	46	202	21	75	4998	43650
1939	2671	27515	128	964	1643	8921	49	245	17	59	4508	37704
1940	2640	25894	117	893	1492	7914	48	241	12	51	4309	34993
1941	2342	22130	110	841	1562	8092	35	176	11	48	4060	31287
1942	2193	20514	125	926	1463	7637	34	170	10	42	3825	29289
1943	2269	21314	126	932	1310	6214	34	172	11	45	3750	28677

\* SOURCE: Department of Housing & Buildings of the City of New York.

## Plaintiff's Exhibit 14.

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## APPENDIX J.

REAL ESTATE TAX LEVIES IN NEW YORK  
CITY 1924-1943 \*SHOWING THE UNCOLLECTED AMOUNT AT THE END OF  
EACH YEAR AND THE PERCENTAGE OF THE  
LEVY UNCOLLECTED.

Year	Levy	Amount Uncollected at End of Year	Percentage Uncollected at End of Year
1924	\$306,967,641	\$ 29,641,930	9.66%
1925	321,956,183	30,624,971	9.51%
1926	355,042,424	36,344,451	10.24%
1927	394,929,498	45,016,312	11.40%
1928	434,712,296	55,932,083	12.87%
1929	458,197,585	66,666,326	14.55%
1930	488,611,596	71,224,445	14.58%
1931	504,987,915	89,391,426	17.70%
1932	526,206,103	139,233,534	26.46%
1933	449,536,372	118,759,214	26.42%
1934	472,544,112	100,270,620	21.22%
1935	469,370,548	74,015,451	15.77%
1936	453,546,219	52,649,465	11.61%
1937	460,246,376	47,035,080	10.22%
1938	490,675,930	49,070,064	10.00%
1939-40	492,476,164	42,859,021	8.70%
1940-41	496,746,660	44,171,217	8.89%
1941-42	483,516,143	38,553,294	7.97%
1942-43	483,940,316	37,553,707	7.76%

\* SOURCE: Department of Finance, City of New York.

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## Plaintiff's Exhibit 15.

## APPENDIX B.

## VACANCY SURVEY OF COMPETITIVE APARTMENTS IN MANHATTAN.\*

(Not including old-law tenements)

Date of Survey:	% Vacant:
October 1, 1924	11.4%
October 1, 1925	12.2%
October 1, 1926	9.5%
October 1, 1927	9.0%
October 1, 1928	9.4%
December 1, 1929	9.2%
October 1, 1930	13.2%
October 1, 1931	13.6%
October 1, 1932	17.7%
October 15, 1933	13.2%
November 1, 1934	8.4%
November 15, 1935	7.6%
November 1, 1936	4.9%
November 1, 1937	5.5%
November 1, 1938	6.6%
November 1, 1939	7.5%
October 1, 1940	10.9%
October 1, 1941	10.3%
October 1, 1942	8.0%
October 1, 1943	2.1%
February 15, 1944	0.875%

\* SOURCE: The Real Estate Board of New York, Bulletin of Management Division. Copy on file in the Municipal Reference Library, 2230 Municipal Building, Manhattan.

## Plaintiff's Exhibit 16.

## APPENDIX E.

## MANHATTAN FORECLOSURES DURING 1943.\*

## 100 INSTANCES OF AMOUNTS DUE ON MORTGAGES EXCEED THE ASSESSED VALUE.

Block #	Lot #	Address	Date Conveyed	Amount Due on Mortgage	Assessed Value 1943-1944
107	48	273 Water St.	6/25/43	\$ 42,600.57	\$ 11,000
216	12	384 Washington St.	5/17/43	22,467.52	17,000
268	37	39/41 Montgomery St.	4/21/43	29,199.98	22,000
285	16	219 E. Broadway	5/21/43	47,716.08	39,000
323	62	334 1/2 Delancey St.	8/ 5/43	80,306.48	76,000
333	43	58 Columbia St.	10/27/43	17,225.21	15,500
334	54	102 Columbia St.	9/ 17/43	54,767.28	50,000
349	49	173 Stanton St.	8/12/43	15,374.34	14,000
350	26	19 Clinton St.	10/20/43	29,282.64	29,000
353	43	122 Delancey St.	9/27/43	85,907.71	80,000
353	70	97 Suffolk St.	2/27/43	21,669.59	21,000
378	19	724 East 9 St.	8/25/43	11,304.56	10,500
403	29	644 E. 11th St.	6/ 7/43	11,038.12	9,000
394	50	635 E. 11th St.	8/26/43	19,477.38	17,000
397	22/24	181/3 E. 2nd St.	8/17/43	54,801.29	54,000
402	29	172/6 E. 7th St.	7/ 7/43	101,014.96	85,000
406	20	528 E. 13th St.	10/11/43	31,298.55	28,000
423	25	111 Chrystie St.	3/31/43	31,957.88	27,000
433	28	89/93 Ave. A	7/ 8/43	141,579.70	105,000
444	33	88 East 3rd St.	8/12/43	21,317.87	16,000
448	52	307 E. 6th St.	9/ 3/43	23,640.97	14,500
449	56	51 E. 7th St.	6/23/43	19,197.46	18,000
460	40/42	69/73 2nd Ave.	5/25/43	127,073.39	104,000
470	9	365/9 Broome St.	7/22/43	104,489.08	100,000
518	35	146 Sullivan St.	5/20/43	26,679.86	25,000
526	57	184 Bleecker St.	1/28/43	20,462.63	17,000
529	7	656/8 Broadway	1/21/43	323,653.89	254,000
561	5	47/59 University Pl.	9/ 2/43	1,135,400.24	1,070,000
573	31	20/22 W. 10th St.	3/ 2/43	68,311.13	68,000
573	34	16 W. 10th St.	5/ 6/43	59,024.83	53,000
574	54	19 W. 10th St.	6/ 5/43	62,981.57	47,000
568	26	15/19 E. 10th St.	5/ 3/43	190,674.89	170,000
592	82	129/35 Washington Pl.	2/27/43	255,251.55	230,000
618	17	232 W. 14th St.	5/27/43	47,241.05	38,000
640	52	336 W. 12th St.	5/14/43	24,928.85	21,000
735	60	438 W. 38th St.	4/ 1/43	21,069.30	20,000

\* SOURCE: Real Estate Record and Tax Department of City of N. Y.



## Plaintiff's Exhibit 16.

Block #	Lot #	Address	Date Conveyed	Amount Due on Mortgage	Assessed Value 1943-1944
788	86	594 8th Ave.	2/20/43	846,151.37	700,000
793	56	130 1/2 W. 18th St.	1/26/43	32,445.87	30,000
803	49	114 W. 28th St.	9/18/43	29,678.00	27,000
816	54	20 W. 15th St.	2/26/43	33,144.42	18,500
849	53	36 E. 21st St.	3/29/43	33,590.13	22,000
898	25	245 East 17th St.	6/9/43	60,109.30	59,000
883	67	113 Lexington Ave.	6/29/43	31,298.65	23,000
909	21	241 East 28th St.	5/25/43	18,191.55	15,500
1144	18	135 W. 72nd St.	1/11/43	81,466.52	73,000
1150	41	120 1/8 W. 79th St.	9/3/43	685,521.72	675,000
1149	58	162 West 78th St.	4/22/43	28,308.76	24,500
1186	58	333 West 78th St.	8/20/43	17,075.09	16,000
1216	54	152 1/8 W. 86th St.	4/5/43	404,813.39	385,000
1218	29	107 W. 87th St.	7/7/43	18,067.20	15,500
1219	21	123 West 88th St.	10/29/43	35,377.18	15,000
1232	1	500 West End Ave.	3/26/43	666,300.00	645,000
1233	29	520 1/8 Amsterdam Ave.	9/9/43	954,034.91	690,000
1233	33	200 1/6 W. 86 St.	1/6/43	2,901,719.53	2,510,000
1252	1	200 1/1 Riverside Dr.	3/23/43	403,322.61	325,000
1251	37	186 Riverside Dr.	6/22/43	1,100,000.00	875,000
1311	161	122 E. 57th St.	12/27/43	88,526.41	84,000
1346	102	305 E. 53rd St.	4/16/43	16,629.62	12,000
1406	16/17	139 1/4 E. 71st St.	4/14/43	175,617.64	174,000
1439	36	338 1/4 E. 65th St.	8/20/43	44,244.04	42,000
1452	6	313 1/9 E. 77th St.	3/13/43	219,788.71	200,000
1487	8	507 1/9 E. 75th St.	4/17/43	45,039.95	39,000
1493	35	944 Park Ave.	2/8/43	478,505.05	425,000
1501	33	1100 1/6 Park Ave.	2/1/43	1,877,551.81	1,715,000
1501	56	1246 1/8 Madison Ave.	5/22/43	1,406,891.99	1,215,000
1513	1	1001 Park Ave.	2/8/43	666,384.98	635,000
1515	24	153 1/5 E. 86th St.	1/30/43	338,974.79	245,000
1517	9	111 1/9 E. 88th St.	10/29/43	504,308.88	450,000
1531	36	226 E. 86th St.	6/21/43	71,420.04	65,000
1541	9	213 E. 95th St.	7/23/43	21,383.01	16,500
1579	33	534 E. 83rd St.	10/6/43	27,384.12	20,000
1575	49	1510 1/2 York Ave.	6/9/43	131,787.89	98,000
1595	44	12 W. 112th St.	1/21/43	20,373.62	17,000
1598	69	92 Lenox Ave.	4/21/43	70,933.99	53,000
1604	34	65 E. 98th St.	6/17/43	23,846.95	19,000
1674	1	1984 2nd Ave.	8/24/43	26,280.27	22,000
1674	10	313 1/5 E. 102nd St.	1/26/43	33,513.40	27,000
1677	2	2042 2nd Ave.	10/7/43	16,637.79	15,000
1687	44	312 1/4 E. 116th St.	1/29/43	49,988.45	44,000

*Plaintiff's Exhibit 16.*

Block #	Lot #	Address	Date Conveyed	Amount Due on Mortgage	Assessed Value 1943-1944
1721	2	242 Lenox Ave.	1/29/43	21,892.12	18,000
1749	48	60 W. 125th St.	9/20/43	35,893.10	29,000
1784	13	227/9 E. 119th St.	5/19/43	41,288.20	33,000
1789	16	233/5 E. 124th St.	3/ 3/43	41,334.84	34,000
1824	30	83 Lenox Ave.	3/26/43	31,598.40	25,500
1844	27	3/5 W. 108th St.	9/ 8/43	80,578.75	75,000
1857	47	126 W. 103rd St.	5/15/43	30,422.76	28,000
1874	22	2680/4 Broadway	3/ 4/43	466,780.24	420,000
1875	29	880/90 Amsterdam Ave.	5/19/43	163,769.76	155,000
1881	7/8	249/51 W. 109th St.	5/17/43	79,973.79	70,000
1884	48	536/8 W. 113th St.	3/25/43	213,337.30	195,000
1883	18	521 W. 111th St.	2/16/43	154,400.00	140,000
1895	52	603/7 W. 113th St.	7/ 6/43	210,363.05	145,000
1943	58	362 W. 117th St.	9/24/43	17,741.69	16,000
1952	2/102	377 W. 125th St.	3/23/43	53,029.22	28,000
1964	8	439 W. 123rd St.	2/ 6/43	118,605.61	110,000
1966	62	417 W. 125th St.	9/29/43	33,278.00	19,000
2084	1	3680 Broadway	2/ 8/43	41,788.68	33,000
2088	100	606/16 W. 142nd St.	7/27/43	258,257.43	240,000
2165	65	1467/9 St. Nicholas Ave.	9/ 1/43	112,648.36	105,000
2170	1	4380/90 Broadway	8/14/43	159,616.80	140,000

**Plaintiff's Exhibit 17.****APPENDIX E****MANHATTAN DEEDS SURRENDERED IN LIEU OF FORECLOSURE DURING 1943.\*****100 INSTANCES OF AMOUNTS DUE ON MORTGAGES EXCEED THE ASSESSED VALUE.**

Block #	Lot #	Address	Date Conveyed	Amount Due on Mortgage	Assessed Value 1943-1944
50	17	96/98 Liberty St.	12/27/43	\$ 700,000	\$ 270,000
99	25/6	18/24 Ferry St.	2/27/43	110,000	85,000
112	7	364/6 Pearl St.	3/ 2/43	14,000	13,000
135	18	96 Chambers St.	7/ 7/43	59,700	55,000
139	24	191 Reade St.	2/ 1/43	33,000	30,000
185	7	219 West St.	5/25/43	30,000	26,000
257	31	2 Rutgers Pl.	8/26/43	25,700	24,500

\* SOURCE: Real Estate Record and Tax Department of the City of New York.

## Plaintiff's Exhibit 17.

Block #	Lot #	Address	Date Conveyed	Amount Due on Mortgage	Assessed Value 1913 1914	
278	58	54 Oliver St.	3/15/43	20,000	19,000	
313	13	391 Grand St.	9/8/43	31,780	30,000	
338	54	239 Rivington St.	10/25/43	7,920	6,000	
372	13	280 E. 3rd St.	12/1/43	18,400	17,500	
377	67	241 East 7th St.	3/4/43	17,800	16,500	
384	28	247 East 2nd St.	3/9/43	14,000	9,500	
384	40	352 E. Houston St.	3/6/43	11,000	8,500	
389	59	603 E. 6th St.	10/13/43	14,700	14,500	
404	31	168 Avenue B.	9/23/43	15,000	14,000	
406	46	537 East 12th St.	1/25/43	13,398	12,000	
434	26	126 East 7th St.	2/27/43	15,000	13,500	
434	43	429 East 6th St.	9/23/43	17,840	14,000	
451	21	220 East 10th St.	5/25/43	24,500	24,000	
392	48	627 East 9th St.	10/18/43	17,622	17,000	
382	57	705 East 12th St.	9/21/43	11,000	9,500	
440	12	435 E. 12th St.	9/11/43	14,175	12,500	
405	56	511 E. 11th St.	7/28/43	18,200	15,000	
438	48	259 East 10th St.	8/14/43	17,200	15,500	
526	34	69 Macdougal St.	7/29/43	20,000	19,000	
552	53	110 Waverly Pl.	7/21/43	40,000	29,000	
617	42	228 W. 13th St.	11/23/43	20,000	19,000	
612	12	38 Perry St.	2/18/43	18,500	17,500	
805	50	109 West 29th St.			30,000	
	51	107 West 29th St.			31,000	
	56	839 Sixth Ave.			50,000	
	57	841 Sixth Ave.	7/16/43	332,140	55,000	\$248,000
	58	843 Sixth Ave.			13,000	
	59	845 Sixth Ave.			61,000	
	65	108 W. 30th St.			58,000	
880	69	50 Lexington Ave.	3/12/43	76,000	28,500	57,500
	70	52 Lexington Ave.			29,000	
885	66	153 Lexington Ave.	9/17/43	42,000	17,000	34,000
	67	151 Lexington Ave.			17,000	
888	58	213 Lexington Ave.	5/28/43	28,000	21,500	
865	8	7/9 E. 35th St.	8/20/43	215,000	165,000	
894	14	119 E. 38th St.	10/7/43	40,000	33,000	
902	12	213 E. 21st St.	9/13/43	26,210	24,500	
924	47	336 E. 19th St.	5/15/43	13,020	13,000	
973	4	250 Avenue A.	1/15/43	18,500	13,500	
135	21	131 W. 63rd St.	5/27/43	13,500	12,500	
134	45	120 W. 63rd St.	6/9/43	28,875	24,000	
124	5	59/65 W. 71st St.	7/14/43	331,500	315,000	
208	Pro	61 W. 94th St.	7/15/43	17,500	16,000	

## Plaintiff's Exhibit 17.

Block #	Lot #	Address	Date Conveyed	Amount Due on Mortgage	Assessed Value 1943-1944	
4300	21	643 Lexington Ave.			118,000	
	20	645 "			120,000	
	53	647 "			130,000	
	52	649 "			80,000	
	51	651 "			82,000	
	152	653 "			95,000	
	50	655 "			110,000	\$99
	151	134 E. 55th St.	3/11/43	1,656,275.50	21,000	
	150	136 "			55,000	
	49	138 "			40,000	
	148	140 "			40,000	
	48	142 "			50,000	
	47	144 "			52,000	
1242	40	2532 Broadway	7/12/43	84,750	83,000	
1375	17	658 60 Madison Ave.	12/31/43	401,714	395,000	
1392	60	24 E. 78th St.	2/6/43	50,000	39,000	
1405	64	120 E. 71st St.	7/22/43	39,800	37,000	
1412	1	900 Fifth Ave.	2/18/43	475,000	405,000	
1492	56	1070 Madison Ave.	2/25/43	374,529	305,000	
1507	56	16 E. 96th St.	10/2/43	420,004	405,000	
1509	20	1177 85 Lexington Ave.	11/1/43	504,500	485,000	
1524	16	135 E. 92nd St.	1/30/43	33,000	29,000	
1564	147	404 E. 85th St.	2/2/43	17,000	10,000	
1609	59	1530 Madison Ave.	9/24/43	32,000	28,000	
1615	48	62 E. 110th St.	6/26/43	26,500	21,000	
1637	60	128 E. 110th St.	3/16/43	15,500	14,500	
1657	27	2091 2nd Ave.	10/29/43	11,370	11,000	
1653	121	243 E. 103rd St.	3/15/43	9,000	7,500	
1661	121	245 E. 111th St.	3/15/43	15,000	11,000	
1693	12	349 E. 101st St.	9/24/43	29,544	28,000	
1716	40	1714 Park Ave.	9/24/43	30,460	27,000	
1746	42	66 E. 120th St.	3/12/43	12,000	9,500	
1756	52	2089 Madison Ave.	4/27/43	14,000	13,500	
1757	14	2102 Madison Ave.	3/12/43	22,600	9,500	
1730	51	28 W. 133rd St.	3/12/43	12,000	8,000	
1733	34	2222 5th Ave.	3/3/43	18,000	17,500	
	35	2224 5th Ave.	3/3/43	18,000	17,500	
	37	2228 5th Ave.	3/3/43	18,000	17,500	
	38	2230 5th Ave.	3/3/43	18,000	17,500	
1829	5	273 W. 113th St.	2/25/43	22,475	21,000	
	6	271 W. 113th St.	2/25/43	22,475	21,000	
1847	64	308 W. 114th St.	9/14/43	19,000	17,000	
1921	46	124 W. 137th St.	3/12/43	25,400	18,000	
1944	39	308 W. 118th St.	4/12/43	20,000	19,000	
1985	29	1420 Amsterdam Ave.	12/22/43	45,626	34,000	
2075	56	560 W. 144th St.	9/30/43	144,598	142,500	
2080	58	564 W. 149th St.	5/5/43	34,150	29,000	
2109	66	48 Sylvan Ter.	11/29/43	5,000	2,700	
2157	60	555 W. 185th St.	10/3/43	10,421	7,000	

**Plaintiff's Exhibit 18.****APPENDIX I.****NEW YORK CITY BASIC REAL ESTATE  
TAX RATES**

Tax Year	Basic City Rate
1939-40	2.82
1940-41	2.84
1941-42	2.80
1942-43	2.79
1943-44	2.89
1944-45	2.75 (probable)*

\* Final figure will not be available until after May 25, 1944.

SOURCE: Chief Assessor's Office, Tax Department of City of  
N. Y.

**Plaintiff's Exhibit 19.****APPENDIX I.****47 MORTGAGES REFINANCED IN 1943 AT 7%  
INCREASE IN PRINCIPAL**

The following article appeared in the March 29, 1944 news letter of James Felt & Company by James Felt, its President, who is also a governor of the New York Real Estate Board:

**AMORTIZATION AND DEPRECIATION.**

According to the Mortgage Conference Bulletin, 47 mortgage loans on 6-story elevator apartments that were built between 1935 and 1938 were refinanced during 1943. Original financing of the entire group aggregated \$8,437,000, of which \$790,000 was retired through amortization, leaving an unpaid balance of \$7,647,000. New loans

were placed, aggregating \$8,182,000—an increase of \$535,000.

Despite the 7% increase in principal, new mortgages were obtained at substantially lower interest rates than the old mortgages—4.22%, as against 4.80%.

Amortization has frequently been regarded as an adequate means of offsetting depreciation and obsolescence. Experience with the 47 loans summarized reveals the failure of amortization as an offset to depreciation. As soon as a more favorable mortgage market opens, owners refinance and frequently obtain increased loans, which, in effect, permit a refund to the owner of whatever payments have been made in reduction of mortgage principal. If we are to develop a sound system for protecting owners, mortgagees and the general community from the ravaging effects of deterioration and obsolescence, retirement funds should be frozen and on a compulsory basis.

### **Statement as to Evidence.**

The foregoing case contains all the evidence adduced and proceedings had upon the trial of this action, together with the exceptions of both sides taken upon said trial.



484 **Opinion by Mr. Justice Fennelly.**

(N. Y. Law Journal, August 1, 1944.)

485 East N. Y. Sav. Bank v. Hahn—This is an action commenced by the plaintiff on March 27, 1944, to foreclose a mortgage upon real estate. The only default is as to the principal amount, which became due April 1, 1924, and has not been extended. Interest, taxes and the amortization as provided by chapter 93 of the Laws of 1943 have been paid. It is the plaintiff's contention that this latter enactment, that extended the mortgage moratorium and which covered this mortgage was invalid and unconstitutional, at the time it became a law, or at any rate at the time of the commencement of this action.

If plaintiff is correct in its position, judgment of foreclosure must be granted.

486 The legislation attacked impairs the obligations of the mortgage contract. It can only be sustained as a proper exercise of the police power, if the emergency which originally called the mortgage moratorium into being in 1933 existed at the time of its enactment and at the time of the commencement of this action and that the emergency was a temporary one. At the time of the 1943 renewal of the moratorium legislation which extended it to July 1, 1944, the Legislature made the finding that in its judgment, the public emergency of 1933 still continued and existed. It provided for an amortization of 1 percent. (Subsequently the 1944 Legislature in again renewing for a year the Mortgage Moratorium Law, provided for an amortization of 2 per cent.) The question of whether or not these amortization provisions to alleviate the situation of mortgagees kept pace

with improvement in conditions, is not before the court, and no observation will be made thereon.

While great respect must be given the legislative declaration of the continued existence of the emergency, the question of whether it still existed, is always open to judicial inquiry (*Home Bldg. & Loan Ass'n. v. Blaisdell*, 290 U. S., 398).

A careful and exhaustive preparation of this case has been made by plaintiff's counsel. It is shown that there are ample funds available for mortgage investment. As of January 1, 1944, the amount invested by savings banks in mortgages in New York State was slightly less than \$3,000,000,000, and there was available for mortgage lending within the 65 per cent. of assets limit provided by law, a sum in excess of \$1,000,000,000.

The mortgage market is, of course, inseparably connected with the real estate market. Testimony was submitted by plaintiff that can well be credited, that the real estate market in 1943 was active and gave indications of being more active in 1944. The testimony shows and it is a matter of common knowledge, that much foreclosed institutional real estate has been liquidated. For the purpose of collecting and distributing mortgage and real estate information to the savings banks supporting the service, New York State is divided into groups. Group 5 embraces Long Island and Staten Island. The chief statistician of this group prepared figures showing real estate holdings of this group that resulted from mortgage investments. The figures show that member banks in Brooklyn had an overhang of real estate as of the end of 1939 of \$49,360,469; and as of January 1, 1944, of \$17,105,680. In Queens the figures were (plaintiff's exhibit 6) at the end of

1939, \$9,808,417; and as of January 1, 1944, \$3,857,742. In Nassau the figures were at the end of 1939, \$2,487,143; and as of January 1, 1944, \$495,952. There is still to be liquidated and was at the time of the commencement of this action a considerable amount of real estate held by savings banks, insurance companies, Home Owners Loan Corporation and the trustees of estates. Not until the holdings of these unwilling owners of real estate have been reduced so that they are no longer a factor in competition with the real estate of those who willingly acquired real estate and are willing but not forced to sell can it be said that there is a normal real estate market.

The Legislature had the right, in its judgment, to determine that abnormal deflation of real property values, in view of these circumstances, existed at the time it enacted the renewal legislation of 1943. This was one of the reasons upon which the original moratorium legislation of 1933 was based. The emergency, in the court's opinion, still existed at the time this action was commenced.

Plaintiff's counsel advances the argument that no alleged emergency of eleven years' duration can be considered temporary. But time is relative. The conditions which created the emergency are righting themselves. The testimony of the statistician for Group 5 shows that in this area from 1933 to 1938 foreclosures exceeded new loans and that from then on the reverse was the case. Liquidation of institutional properties has been steadily going on. The time can reasonably be foreseen when they will no longer be a competitive factor in the real estate market.

The motion made by defendant at the end of plaintiff's case to dismiss the complaint, upon which decision was reserved, is granted, with an exception to plaintiff. Submit judgment upon two days' notice of settlement.

Pleadings and exhibits may be had from the clerk.

### **Stipulation Settling Case.**

IT IS HEREBY STIPULATED that the foregoing record contains all the evidence given upon the trial of this action, together with the exceptions of both sides taken upon said trial, and that the same be settled and ordered on file as the case on appeal and annexed to the judgment roll herein.

Dated, New York, September , 1944.

**JOHN P. McGRATH,  
JOHN J. BUCKLEY,**

**Attorneys for Plaintiff-Appellant.**

**COLLER & COLLIER,  
Attorneys for Defendants-Respondents.**

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**Order Settling Case.**

On the above stipulation, I HEREBY CERTIFY that the foregoing record contains all the evidence adduced and proceedings had upon the trial of this action, together with exceptions of both sides taken on said trial, and said case is hereby settled and ordered on file as the case on appeal in this action.

Dated, New York, September , 1944.

JOSEPH FENNELLY,  
J. S. C.

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**Stipulation Waiving Certification.**

Pursuant to Section 170 of the Civil Practice Act, it is hereby stipulated that the foregoing consists of true and correct copies of the notice of appeal, judgment roll, and case and exceptions as settled, and the whole thereof, now on file in the office of the Clerk of the County of New York, and certification thereof by said Clerk, pursuant to Section 616 of the Civil Practice Act, is hereby waived.

498

Dated, New York, September , 1944.

JOHN P. McGRATH,  
JOHN J. BUCKLEY,  
Attorneys for Plaintiff-Appellant.

COLLER & COLLIER,  
Attorneys for Defendants-Respondents.

**Order Filing Record in Court of Appeals.**

Pursuant to Section 616 of the Civil Practice Act, it is

ORDERED that the foregoing printed record be filed in the office of the Clerk of the Court of Appeals of the State of New York.

Dated, New York, September , 1944.

JOSEPH FENNELLY,  
*J. S. C.*



[fol. 167a]. IN COURT OF APPEALS OF NEW YORK

STATE OF NEW YORK, ss:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 30th day of December in the year of our Lord one thousand nine hundred and forty-four, before the Judges of said Court.

Witness, the Hon. Irving Lehman, Chief Judge, Presiding; John Ludden, Clerk.

THE EAST NEW YORK SAVINGS BANK, Appellant,  
ag't

ALVIN HAHN & ANO., Impld., &c., Respondents

REMITTITUR—December 30, 1944

Be It Remembered, That on the 4th day of October in the year of our Lord one thousand nine hundred and forty-four, The East New York Savings Bank, the appellant—in this cause, came here unto the Court of Appeals, by John P. McGrath and John J. Buckley, its attorneys, and filed in the said Court a Notice of Appeal and return thereto from the judgment of the Supreme Court. And Alvin Hahn and another, the respondents in said cause, afterwards appeared in said Court of Appeals by Collier & Collier, their attorneys.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, The said Court of Appeals having heard this cause argued by Mr. John P. McGrath of counsel for the appellant; by Mr. Orrin G. Judd for Attorney General of [fol. 167b] the State of New York; No one appearing for the respondents; brief filed by amicus curiae; and after due deliberation had thereon, did order and adjudge that the judgment of the Supreme Court appealed from herein be and the same hereby is affirmed without costs. Questions arising under the Constitution of the United States were presented and necessarily passed upon by this Court. The appellant contended that Chapter 93 of the Laws of the State of New York for the year 1943 violated Section 10 of Article I and Section 1 of the Fourteenth Amendment of the Constitution of the United States. This court held that the above mentioned Chapter of the Laws did not vio-

late either of those Sections of the Constitution of the United States,—and that the legislation was valid.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said judgment be affirmed without costs, &c., as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

John Ludden, Clerk of the Court of Appeals of the State of New York.

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COURT OF APPEALS, CLERK'S OFFICE

Albany, December 30, 1944.

I Hereby Certify, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

John Ludden, Clerk. (Seal.)

[fol. 167c] Reporter's Certificate to opinion omitted in printing.

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[fol. 167d] IN COURT OF APPEALS OF NEW YORK

OPINION—December 30, 1944

LEHMAN, Ch. J.:

The legislative declaration in chapter 793 of the Laws of 1933 that "a serious public emergency, affecting and threatening the welfare, comfort and safety of the people of the state and resulting from the abnormal disruption in economic and financial processes, the abnormal credit

and currency situation in the state and nation, the abnormal deflation of real property values and the curtailment of incomes by unemployment and other adverse conditions, exists" did not "create" a legislative power to suspend or change the legal remedies of holders of bonds and mortgages. The existence of conditions "affecting and threatening the welfare, comfort and safety of the people of the state" may, however, furnish the occasion for the exercise of such power. (*Home Bldg. & L. Assn. v. Blaisdell*, 250 U. S. 398; *Matter of People [Tit. & Mtge. Guar. Co.]*, 264 N. Y. 69, 94). Concededly the existence of extraordinary conditions in 1933 as set forth in this legislative declaration and as confirmed by common knowledge, justified the extraordinary remedy that till July 1, 1934, no action should be brought to foreclose a mortgage for a default in the payment of principal. (*Klinke v. Samuels*, 264 N. Y. 144.) Each year thereafter the Legislature on similar findings decreed that the remedy provided in 1933 should remain in force for another year.

In 1943 the Legislature again declared that "The serious public emergency which existed at the time of the enactment of . . . chapter seven hundred and ninety-three of the laws of nineteen hundred thirty-three . . . having continued, in the judgment of the Legislature, to the present time and still existing, the provisions of such chapters seven hundred and ninety-three of the laws of nineteen hundred thirty-three . . . shall . . . remain and be in full force and effect until July first, nineteen hundred forty-four . . . ." (L. 1943, ch. 93.) The Legislature at the same time provided that an owner of mortgaged premises should not be entitled to claim the benefit of the [fol. 167e] suspension of the right to foreclose the mortgage unless he amortized the principal at the rate of one per cent per annum. The plaintiff challenges the finding of the Legislature that the "serious public emergency" which existed in 1933 still existed in 1943, and urges that the exercise of the power of the Legislature to provide an extraordinary remedy for extraordinary conditions which was justified in 1933 may not be invoked in 1943 when the abnormal conditions of an earlier time have disappeared.

The Legislature has the responsibility of determining when extraordinary conditions exist "threatening the welfare, comfort and safety of the people of the state." Within the limits of its powers as defined by the Constitution of the

State and as limited by the Constitution of the United States, choice of the appropriate remedy for such conditions is then vested in the Legislature. When the legislative choice of a remedy is challenged on the ground that it transcends the limits placed by the Constitution of the State or the Constitution of the United States upon the power of the Legislature and that it impairs the obligation of a contract or deprives a person of his property without due process of law, the legislative finding that a threatening public emergency exists is not conclusive. Judicial inquiry is not precluded whether the remedy chosen is within the power of a State Legislature "construed in harmony with the constitutional limitation on that power." (*Matter of People [Tit. & Mtge. Guar. Co.]*, 264 N. Y. 69, 84) but upon such an inquiry the legislative findings are entitled to great weight and the legislative remedy will not be stricken down unless its invalidity is clearly established.

An extraordinary remedy which is appropriate and legitimate in an exigency resulting from abnormal conditions may be inappropriate and beyond the limits of the power of a State if temporary impairment of the obligation of a contract is continued after the exigency has passed. (*Block v. Hirsch*, 256 U. S. 135, 157.) When this court sustained the validity of limitations upon the remedies of the holder of a bond and mortgage created by chapter 793 of the Laws of 1933, we said that "such legislation, reasonably seeking only *temporary relief*, is not unconstitutional." (*Klinke v. Samuels*, *supra*; italics are new.) "It is always open to judicial inquiry whether the exigency still exists upon [fol. 167f] which the continued operation of the law depends." (*Home Bldg. & L. Assn. v. Blaisdell*, *supra*, p. 442.)

Doubtless such a judicial inquiry would disclose that many—perhaps all—of the adverse conditions created by the "abnormal disruption in economic . . . processes" which, as the Legislature found, existed in 1933 and resulted in a "public emergency," disappeared before 1943. The Legislature did not, in 1943, find that these conditions still existed. It found only that the "serious public emergency" existing in 1933 and "*resulting*" from these conditions, still existed. In 1943 the fact that payrolls and savings bank deposits had increased in almost unprecedented degree was a matter of common knowledge. The Legislature could not ignore the great changes in the eco-

nomie situation. On the other hand, an accumulation of past due mortgages resulting from the ten-year-old ban upon actions to foreclose mortgages for default in the payment of principal might reasonably cause apprehension that a flood of foreclosure actions would follow removal of the ban and might itself justify a statute reasonably calculated to stem the impending flood. Reports which legislative committees made to the Legislature in 1938 and 1943 as well as a message of the Governor called to the attention of the Legislature also the fact that abnormal conditions incident to a war economy or resulting from other causes might still constitute a threat "to the welfare, comfort and safety of the people of the state" and might call for the exercise of the legislative power to provide an extraordinary remedy for extraordinary conditions.

The presumption is that the Legislature "inquired and found" that under the conditions then disclosed there was need for a continuance of the suspension of the right of holders of bonds and mortgages to foreclose for default in the payment of the principal. (*Szold v. Outlet Embroidery Supply Co.*, 274 N. Y. 271, 278.) It is entirely unimportant whether the conditions then existing have created a new emergency, as said by the Governor in his message, or have, as the Legislature said, resulted in the continuance of an emergency itself created by conditions which have run their course. The question which the court must decide is whether the Legislature in the challenged statute has provided an appropriate remedy to tide over an exigency resulting from present conditions. We have [fol. 167g] said in an analogous case that: "Whether an emergency exists or not, the test in each case is whether a situation exists which calls for the exercise of the reserved power of the state and whether the remedy adopted by the state is reasonable and legitimate." (*Matter of People [Tit. & Mtge. Guar. Co.]*, *supra*, p. 94.) We conclude that the challenged statute meets that test.

The judgment should be affirmed, with costs.

#### DISSENTING OPINION

LEWIS, J. (dissenting):

In this action to foreclose a mortgage on real property a challenge by a mortgagee to the constitutionality of the 1943 Mortgage Moratorium Law (L. 1943, ch. 93) has been



denied at Special Term. The defendants-mortgagors, who offered no proof in opposition to the plaintiff's case, have been awarded a judgment dismissing the complaint upon the ground that the evidence presented by the plaintiff-mortgagee failed to establish a cause of action.

Coming to us by direct appeal on constitutional grounds (Civ. Prac. Act, § 588, subd. 4) the case presents the question whether the undisputed facts of record afford a valid basis for the legislative finding upon which the challenged statute rests, viz., that the public emergency, which existed in 1933—at the time of the enactment of section 1077-a of the Civil Practice Act (L. 1933, ch. 793)—continued and still constituted a public emergency on March 11, 1943, when chapter 93 of the Laws of 1943 became a law.

By the 1933 Mortgage Moratorium Law (L. 1933, ch. 793) the Legislature declared "... that a serious public emergency, affecting and threatening the welfare, comfort and safety of the people of the state and resulting from the abnormal disruption in economic and financial processes, the abnormal credit and currency situation in the state and nation, the abnormal deflation of real property values and the curtailment of incomes by unemployment and other adverse conditions, exists. Therefore, in the public interest, the necessity for legislative intervention by the enactment of the provisions hereinafter prescribed, and their application until July first, nineteen hundred thirty-four, is hereby declared as a matter of legislative determination." Then follow the moratory provisions which, during the emergency thus declared, suspended the maintenance of certain foreclosure actions and related actions there defined.

[fol. 167h] Thereafter, in each of the ten succeeding years (except in one instance where the extension was for two years [L. 1941, ch. 782, § 1]) the Legislature extended for a single year the moratory provisions of the 1933 Act, each renewal being based upon a finding that the serious public emergency declared to exist in 1933 had "continued" and was "still existing."

We come then to the statute here called into question (L. 1943, ch. 93) as to which it is important to note that, as in the nine preceding similar laws, the public emergency assigned as the reason for the mortgage moratorium legislation was not some new or different form of abnormality in "economic and financial processes" affecting public welfare within the State. The reason for each succeeding



enactment was the same and is typically expressed in the legislative finding within section 1 of Chapter 93 of the Laws of 1943 with which we are now concerned and which provides in part: "Section 1. The serious public emergency, which existed at the time of the enactment of sections ten hundred and seventy-seven-a . . . of the civil practice act as added by chapter seven hundred and ninety-three of the laws of nineteen hundred thirty-three . . . having continued, in the judgment of the legislature, to the present time and still existing, the provisions of such chapters . . . shall, notwithstanding any provision of such chapter, remain and be in full force and effect until July first, nineteen hundred forty-four . . ."

(Emphasis supplied.)

Although we hold in proper respect the declaration by the Legislature that the same public emergency which called forth moratorium legislation in 1933 still existed in 1943, that declaration is not conclusive. "It is always open to judicial inquiry whether the exigency still exists upon which the continued operation of the law depends." (*Home Bldg. & L. Assn. v. Blaisdell*, 290 U. S. 398, 442.) "A law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change even though valid when passed." (*Chastleton Corp. v. Sinclair* [per HOLMES, J.], 264 U. S. 543, 547-8.) In a prior case which dealt with emergency legislation the same jurist had written—"A limit in time, to tide over a passing trouble, well may justify a law that could not be upheld as a permanent change." (*Block v. Hirsh*, 256 U. S. 135, 157; see, [fol. 167i] also, *Klinke v. Samuels*, 264 N. Y. 144, 149; *Matter of People [Tit. & Mtge. Guar. Co.]*, 264 N. Y. 69, 95-6.)

Here the basis of the appellant's challenge to the 1943 Moratorium Law is the clause of the Federal Constitution (art. 1, § 10) which forbids enactment by a State of a law impairing a contract obligation. It is not denied that in the public emergency which concededly existed in 1933 the moratorium legislation of that year was a valid exercise of the State's essential reserved power and that the temporary suspension of foreclosure rights possessed by mortgagees was then apposite to emergency relief. "The economic interests of the State may justify the exercise of its continuing and dominant protective power notwithstanding

interference with contracts. . . . 'the interdiction of statutes impairing the obligation of contracts does not prevent the State from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power . . . is paramount to any rights under contracts between individuals.' " (HUGHES, Ch. J., writing in *Home Bldg. & L. Assn. v. Blaisdell*, *supra*, pp. 437, 439.) Accepting that rule as a statement of an appropriate and necessary principle of government, the appellant assents that the exigency which fully warranted the enactment of the Moratorium Law of 1933 did not continue into the tenth year thereafter to afford a legal basis for the enactment of the 1943 statute. The appellant's submission is that the invalidity of chapter 93 of the Laws of 1943 is established by the record before us which is said to contain undisputed proof that the emergency of 1933 which concededly warranted the temporary suspension of the exercise by the appellant of its contract rights as a mortgagee, has not "continued" and was not "still existing" in 1943 when the Moratorium Law here in question became effective. If so, the judgment before us for review must be reversed. I pass to a consideration of the evidence. ♦

Among the economic factors existing in 1933 which the Legislature found warranted the moratorium legislation of that year, was "the curtailment of incomes by unemployment." As to that factor the present record shows that between 1933 and 1943 there was in the State of New York [fol. 167j] an increase of 92½% in the number of wage earners employed and an increase of 266% in weekly payrolls. In 1933 the average weekly earnings of employees was \$21.90; in 1943 that average had increased 103.7% to \$44.68. In 1933 the actual number of workers employed in manufacturing was 323,071; in 1943 that number had increased to 735,265.

Other exigent factors found and declared by the Legislature to exist in 1933 were an "abnormal disruption in economic and financial processes, the abnormal credit and currency situation in the state . . . ." The fact is within our judicial knowledge that the banks of the nation had been closed by a Federal Executive Order in 1933. In that year, the Superintendent of Banks reported a short-

age of currency in the State. At the close of that year his report stated—"Attention was at once centered upon plans for the issuance of scrip. And on March 6, 1933, the Government asked the Legislature for an act authorizing the creation of a State-wide corporation to serve this purpose. Such a bill was passed immediately and the plans for the issuance of scrip against bank deposits moved swiftly forward and were not abandoned until it was definitely known that the National Government was prepared to offer a solution." That report speaks of conditions at or about the time of the "bank holiday" of 1933, nearly six months prior to the enactment of the 1933 Moratorium Law. The record shows however—on the question of improvement in general financial conditions within the State—that on December 31, 1935, the amount of demand and time deposits in all banks—in both commercial and savings banks—aggregated 13.2 billion dollars; on June 30, 1943, the total of those types of deposits had increased to 25.7 billion dollars, an increase of 95% and a maximum for all time. In 1933 the savings banks of the State lost 7.54% of their deposits; in 1943 the savings banks gained 8.57%. In 1933 savings bank depositors withdrew \$392,000,000 more than they deposited; in 1943 the same type of depositors placed in savings banks \$500,000,000 more than they withdrew. In 1933 the total amount of money in the nation was \$45.49 per capita; in February, 1944, the amount of money in circulation was \$151.22 per capita—an increase of more than three times the per capita figure of 1933. In 1933 the aggregate amount of money in circulation in the nation was [fol. 167k] \$5,720,764,000; on February 29, 1944, that aggregate figure had increased to \$20,823,568,000.

The Moratorium Law of 1933 also mentions as a factor prompting the legislation of that year the existence of an "abnormal deflation of real property values". Upon that subject the evidence is that between 1933 and 1944 there was a sharp decline in housing vacancies in the six largest cities of the State. It also appears that in those six cities for the year 1933 the average tax delinquency was 17.3% of the total taxes levied; in 1942 that average was 4.8%. There is evidence that on January 1, 1944, the savings banks of the State had available for new investment in real estate mortgages under section 235, paragraph 6 (d), of the Banking Law a sum in excess of one billion dollars. There is also the significant item of evidence that in 1943

the savings banks loaned on mortgages covering property outside the State—in Pennsylvania, New Jersey and Connecticut—approximately \$100,000,000. Upon the same subject there is also testimony by experts that in the metropolitan area of New York City there was an active real estate market in 1943 and that in that year money was readily available to refinance mortgages on buildings constructed prior to 1931.

The Moratorium Law of 1943, like the nine similar statutes which preceded it, was temporary in operation. It was limited to the exigency which called it forth and which the Legislature expressly declared to be the emergency of 1933, "continued" and "still existing" in 1943. The operation of the Moratorium Law of 1943 could not validly outlast the emergency which prompted its enactment. It could not be so extended as to suspend the contract rights of the appellant mortgagee beyond that emergency. (See *Home Bldg. & L. Assn. v. Blaisdell*, *supra*, p. 447.) The undisputed evidence to which reference has been made leads me to conclude that the emergency which caused the enactment of the Moratorium Law of 1933 was not "still existing" on March 11, 1943, when chapter 93 of the Laws of 1943 became a law. To adjudicate otherwise upon the evidence before us would be in disharmony with the constitutional limitation which the appellant rightly invokes. "Necessarily the power to declare a law unconstitutional is always exercised with reluctance; but the duty to do so, in a proper case, cannot be declined, and must be discharged [fol. 1671] in accordance with the deliberate judgment of the tribunal in which the validity of the enactment is directly drawn in question." (*Pollock v. Farmers' Loan & Trust Co.*, 157 U. S. 429, 554.)

Accordingly I dissent and vote for reversal and the direction of judgment of foreclosure and sale in favor of the plaintiff.

Loughran, Rippey, Conway, Desmond and Thacher, JJ., concur with Lehman, Ch. J.; Lewis, J., dissents in opinion.

Judgment affirmed.

[fol. 168] IN SUPREME COURT OF NEW YORK, KINGS COUNTY

Present: Hon. Algernon I. Nova, Justice.

THE EAST NEW YORK SAVINGS BANK, Plaintiff,

against

ALVIN HAHN and HANNAH HAHN, His Wife, and PEOPLE  
OF THE STATE OF NEW YORK, Harold Meyers and Rose  
Meyers, Defendants

ORDER ON REMITTITUR—February 13, 1945

The above named plaintiff having appealed to the Court of Appeals of the State of New York, from the judgment of this Court, entered in the office of the Clerk of the County of Kings, on the 18th day of August, 1944, dismissing the complaint at the close of the plaintiff's case upon the ground that on the testimony, exhibits and the entire record presented by the plaintiff, the plaintiff had failed to establish that Chapter 93 of the Laws of 1943 of the State of New York was invalid and unconstitutional at the time it became a law or at the time of the commencement of this action, and said appeal having been duly argued in the Court of Appeals and said Court of Appeals having by an order entered on the 30th day of December, 1944 in the office of the Clerk of the Court of Appeals affirmed the judgment of this Court and the remittitur having been remitted to the Clerk of the [fol. 169] County of Kings,

Now, upon reading and filing the remittitur from the Court of Appeals, and upon the motion of Collier & Collier, Esqs., attorneys for the defendants, Alvin Hahn and Hannah Hahn, it is

Ordered that the order and judgment of the Court of Appeals be and the same hereby are in all respects made the order and judgment of this Court.

Enter.

A. I. Nova, J. S. C.

Granted Feb. 13, 1945. Francis J. Sinnott, Clerk.



[fol. 170] IN SUPREME COURT OF NEW YORK, KINGS COUNTY

THE EAST NEW YORK SAVINGS BANK, Plaintiff,  
against

ALVIN HAHN and HANNAH HAHN, His Wife, and PEOPLE  
OF THE STATE OF NEW YORK, Harold Meyers and Rose  
Meyers, Defendants

JUDGMENT ON REMITTITUR—February 26, 1945

The above named plaintiff having appealed to the Court of Appeals of the State of New York, from the judgment of this Court, entered in the office of the Clerk of the County of Kings, on the 18th day of August, 1944, dismissing the complaint at the close of the plaintiff's case upon the ground that on the testimony, exhibits and the entire record presented by the plaintiff, the plaintiff had failed to establish that Chapter 93 of the Laws of 1943 of the State of New York was invalid and unconstitutional at the time it became a law, or at the time of the commencement of this action, and said appeal having been duly argued in the Court of Appeals and said Court of Appeals having by an order entered on the 30th day of December, 1944, in the office of the Clerk of the Court of Appeals affirmed the judgment of this Court and the remittitur having been remitted to the Clerk of the County of Kings, and the remittitur of the said Court of Appeals having been filed herein, and the order having been entered herein making the order and [fol. 171] judgment of the said Court of Appeals the order and judgment of this Court;

Now, on motion of Collier & Collier, Esqs., attorneys for the defendants, Alvin Hahn and Hannah Hahn, it is hereby

Adjudged that the order and judgment of said Court of Appeals be and the same hereby are made the order and judgment of this court; and it is further

Adjudged that the said judgment entered herein on the 18th day of August, 1944, be and the same hereby is affirmed.

Judgment signed and entered this 26th day of February, 1945.

Francis J. Sinnott, Clerk.

[fols. 172-173] Citation in usual form, showing service on Collier & Collier, omitted in printing.



## [fol. 174] SUPREME COURT OF THE UNITED STATES

[Title omitted]

## ORDER ALLOWING APPEAL

The petition of the East New York Savings Bank, the appellant in the above entitled cause, for an appeal in the above cause to the Supreme Court of the United States from the judgment of the Supreme Court of the State of New York entered upon the remittitur of the Court of Appeals of the State of New York, having been filed with the clerk of this court and presented herein, accompanied by assignment of errors and statement as to jurisdiction, all as provided by the Rules of the Supreme Court of the United States, and the record in this cause having been considered, it is hereby

Ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States from a final judgment dated the 26th day of February, 1945, of the Supreme Court of the State of New York, as prayed in said petition, and that the clerk of the Supreme Court of the State of New York, in the County of Kings, shall, within forty days from this date, make and transmit to the Supreme Court of the United States, under his hand and seal of said court, a true copy of the material parts of the record herein, [fol. 175] which shall be designated by a praecipe or stipulation of the parties, or their counsel herein, all in accordance with the Rules of the Supreme Court of the United States.

It Is Further Ordered that the said appellant shall give a good and sufficient bond in the sum of Two Hundred and Fifty 00/100 Dollars, that said appellant shall prosecute said appeal to effect and answer all costs, if it fails to make its plea good, and that said supersedeas bond, when filed and approved, shall stay the sending down of the mandate herein and of all proceedings in this cause until the final disposition of this cause by the Supreme Court of the United States.

Dated, March 8th, 1945.

Irving Lehman, Chief Judge of the Court of Appeals of the State of New York.

[fol. 176] SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL

To the Chief Judge of the Court of Appeals of the State of New York:

Your petitioner, The East New York Savings Bank, respectfully shows:

Your petitioner, a banking corporation organized and operating under the laws of the State of New York, is the appellant in the above entitled action.

This action was commenced in the Supreme Court of the State of New York, Kings County, to foreclose a mortgage held by the appellant covering certain real property in the Borough of Brooklyn, County of Kings, City and State of New York, owned by the appellees. The action was commenced by the service of copies of the summons and complaint on the appellees on March 27th, 1944.

The mortgage was in the original principal sum of \$5,000 and has since been reduced to \$4,912.50. The mortgage is not in default except as to the principal amount which became due April 1st, 1924. For this default the appellant seeks a judgment of foreclosure and sale.

The complaint contains allegations to the effect that the emergency which originally justified the Legislature of the State of New York in enacting Chapter 793 of the Laws of 1933, commonly known as the mortgage moratorium laws banning foreclosure of mortgages solely for default in payment of principal, had long ceased to exist and that the renewal of the mortgage moratorium legislation, as embodied in Chapter 93 of the Laws of 1943, is an unwarranted and unlawful impairment of the obligation of contracts, in violation of Section 10, Article I of the Constitution of the United States, and an unwarranted deprivation of property without due process of law, in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States. These allegations were placed in issue by the denial of the appellees contained in an answer to the said complaint, verified April 11th, 1944.

The action came to trial in the Supreme Court of the State of New York on May 22nd and 23rd, 1944. The

Court having heard the allegations and proofs of the appellant, the appellees moved to dismiss the complaint at the close of the appellant's case on the ground that the appellant had failed to establish a cause of action. The Court reserved decision thereon and the defendant thereupon rested without offering any further proof and renewed the motion to dismiss the complaint, upon which motion the Court reserved decision. The Court thereafter made its decision in an opinion written by Hon. Joseph Fennelly, granting the motion to dismiss the complaint at the end of the plaintiff's case. Judgment of dismissal was there- [fol. 178] after entered on August 18th, 1944.

Thereafter an appeal was taken directly to the Court of Appeals, that being the court of last resort in which a decision could be had in this case, on the ground that the sole question involved was the constitutionality of Chapter 93 of the Laws of 1943. The appeal having been argued, the judgment of the lower court was affirmed in an opinion written by the Hon. Irving Lehman, in which five Justices of the court concurred. The seventh Justice, Hon. Edmund H. Lewis, dissented in a separate opinion and voted to reverse and to grant judgment for the appellant. Thereafter the Court of Appeals of the State of New York sent down its remittitur consisting of an order of affirmance, dated December 30th, 1944, and the record on appeal which was filed in the office of the Clerk of the Supreme Court of the State of New York, Kings County, where said remittitur now remains of record. The said order of the Court of Appeals, dated December 30th, 1944, contains the following recital:

"Questions arising under the Constitution of the United States were presented and necessarily passed upon by this Court. The appellant contended that Chapter 93 of the Laws of the State of New York for the year 1943 violated Section 10 of Article I and Section 1 of the Fourteenth Amendment of the Constitution of the United States. This court held that the above mentioned chapter of the Laws did not violate either of these Sections of the Constitution of the United States,—and that the legislation was valid.—"

Upon said remittitur a final order, making the order and judgment of the Court of Appeals the order and judgment

of the Supreme Court of the State of New York, was granted on February 13th, 1945, and a judgment was entered in the office of the Clerk of the Supreme Court of the State of New [fol. 179] York, Kings County, on February 26th, 1945.

In accordance with the Rules of the Supreme Court of the United States (Rule 46, par. 2; 28 U. S. C. A. Sec. 354), your petitioner respectfully shows to this Court that the case is one in which, under the legislation in force when the Act of January 31st, 1928 (45 Stat. L. 54) was passed, to-wit, under Section 237-a of the Judicial Code (28 U. S. C. A. Sec. 344), a review can be had in the Supreme Court of the United States as a matter of right, on writ of error.

The errors upon which your petitioner claims to be entitled to an appeal are more fully set forth in the assignment of errors filed herewith, and there is likewise filed herewith a statement as to the jurisdiction of the Supreme Court of the United States, as provided by the Rules of said Supreme Court.

Wherefore, your petitioner prays for the allowance of an appeal from the said Court of Appeals of the State of New York, the highest court in said state in which a decision in this cause can be had, to the Supreme Court of the United States in order that the decision and final judgment of the said Supreme Court of the State of New York may be examined and reversed, and also prays that a transcript of the record, proceedings and papers in this cause, duly authenticated by the Clerk of the Supreme Court of the State of New York, County of Kings, under his hand and seal of said court, may be sent to the Supreme Court of the United States as provided by law, and that an order be made touching the security to be required of the petitioner, [fols. 180-197] and that the bond tendered by the petitioner be approved.

Dated, March 5th, 1945.

The East New York Savings Bank, by Edward A. Richards, President.

*Duly sworn to by Edward A. Richards. Jurat omitted in printing.*

[fol. 198] SUPREME COURT OF THE UNITED STATES

[Title omitted]

• ASSIGNMENT OF ERRORS

Now comes the appellant above named and files herewith its petition for an appeal and says that there are errors in the records and proceedings of the above entitled cause, and for the purpose of having the same reviewed in the United States Supreme Court, makes the following assignment:

First. The Court of Appeals of the State of New York erred in giving judgment affirming the judgment of the court below dismissing the complaint of the appellant as against the appellees, Alvin Hahn and Hannah Hahn, his wife.

Second. The Court of Appeals of the State of New York erred in failing to render judgment in favor of the appellant, reversing the order of the court below dismissing the complaint.

Third. The Court of Appeals of the State of New York erred in holding that Section 93 of the Laws of 1943 of the State of New York is a constitutional act.

Fourth. The Court of Appeals of the State of New York erred in finding that there was an accumulation of past due [fol. 199] mortgages resulting from the ten year old ban upon actions to foreclose mortgages for default in payment of principal.

Fifth. The Court of Appeals of the State of New York erred in finding that there was any reason to cause apprehension that a flood of foreclosure actions would follow removal of the ban on foreclosure for principal defaults sufficient to justify the Legislature of the State of New York in enacting Chapter 93 of the Laws of 1943 of the State of New York.

Sixth. The Court of Appeals of the State of New York erred in finding that abnormal conditions incident to a war economy, or resulting from other causes, might still constitute a threat to the welfare comfort and safety of the people of the state, and that such conditions might form the basis for the exercise of the legislative power to suspend the legal remedies of the holders of bonds and mortgages at



the time of the enactment of Chapter 93 of the Laws of 1943 of the State of New York.

Seventh. The Court of Appeals of the State of New York erred in finding that there was an un rebutted presumption that the Legislature inquired and found that under the conditions disclosed at the time of the enactment of Chapter 93 of the Laws of 1943 of the State of New York, there was need for a continuance of the suspension of the right of holders of bonds and mortgages to foreclose for default in the payment of principal.

Eighth. The Court of Appeals of the State of New York erred in finding that the Legislature found that the public [fol. 200] emergency existing in 1933 continued and still existed at the time of the enactment of Chapter 93 of the Laws of 1943 of the State of New York, although the conditions which brought said emergency about no longer existed.

Ninth. The Court of Appeals of the State of New York erred in finding that there existed any conditions affecting and threatening the welfare comfort and safety of the people of the state, which furnished the occasion for the exercise of the legislative power to suspend the legal remedies of the holders of bonds and mortgages, at the time of the enactment of Chapter 93 of the Laws of 1943 of the State of New York, or at the time of the commencement of the aforementioned action.

Tenth. The Court of Appeals of the State of New York erred in failing to find that Chapter 93 of the Laws of 1943 of the State of New York was limited to the exigency which called it forth and that such exigency, to wit, the conditions set forth in legislative declaration in Chapter 793 of the Laws of 1933, had expired in 1943.

Eleventh. The Court of Appeals of the State of New York erred in failing to find that Chapter 93 of the Laws of 1943 of the State of New York violates Section 10 of Article 1 of the Constitution of the United States by impairing the obligations of contracts, and violates Section 1 of the Fourteenth Amendment of the Constitution of the United States by depriving the appellant of its property without due process of law.

[fol. 201] For which errors the appellant, The East New York Savings Bank, prays that said final judgment of the



Supreme Court of the State of New York, dated and entered the 26th day of February, 1945, in the above entitled cause, be reviewed by the Supreme Court of the United States and reversed, and a judgment rendered in favor of the appellant and for costs.

Dated, March 6th, 1945.

John P. McGrath, Attorney for Appellant.

[fols. 202-205] Bond on appeal for \$250.00 approved and filed March 13, 1945, omitted in printing.

[fol. 206] SUPREME COURT OF THE UNITED STATES

[Title omitted]

#### STIPULATION AS TO RECORD

It Is Hereby Stipulated by counsel for both sides in the above cause, that the Clerk, in making up the transcript, shall follow the records and papers shown in the transcript on file in the Court of Appeals of the State of New York and the Supreme Court of the State of New York, without omission or addition.

Dated, March 20th, 1945.

John P. McGrath, Attorneys for Appellants. Collier & Collier, Attorneys for Appellees.

[fol. 207] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 208] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED ON—Filed April 19, 1945

Comes Now the appellant in the above entitled cause and states that the points upon which he intends to rely in this Court, in this cause, are as follows:

#### Point I

The recent decisions of this Court compel the conclusion that the New York State Mortgage Moratorium Legislation is no longer valid.

*Point II*

The continued existence of an emergency is a necessary prerequisite to the validity of the statute.

*Point III*

The statute under attack cannot be sustained on the ground that a new emergency has arisen.

*Point IV*

No new emergency has arisen since 1933 to justify the continuance of the moratorium.

[fol. 209]

*Point V*

The Court of Appeals gives no valid reason to sustain the statute.

**DESIGNATION OF PARTS OF RECORD TO BE PRINTED**

The appellant reports that the whole of the record, as filed, is necessary for the consideration of the case.

John P. McGrath, John J. Buckley, Attorneys for the Appellant; John P. McGrath, of Counsel for Appellant.

[fols. 210-211] I, Edward H. Collier of Collier and Collier, attorneys of record for the appellees, hereby acknowledge due and timely service of the above statement of points to be relied upon and designation of the parts of the record to be printed and agree that the said designation includes all parts of the record material and necessary to the consideration of the case, and hereby expressly waive all right to file a counter designation of parts of the record to be printed.

Dated April 16, 1943.

Collier & Collier. By Edward H. Collier, Counsel for the Appellees.

[Vol. 212] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—Filed May 21, 1945

The statement of jurisdiction in this case, having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on Cover: File No. 49,627, New York, Supreme Court, County of Kings, Term No. 62. The East New York Savings Bank, Appellant, vs. Alvin Hahn and Hannah Hahn. Filed April 18, 1945. Term No. 62 O. T. 1945.

(9456)